

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

December 12, 2002

9:13 o'clock a.m.

UST POLICY COMMISSION

JENNIFER SCHUCK, RMR, CRR

Certified Court Reporter

Certificate No. 50020

1 THE MEETING OF THE UST POLICY COMMISSION held on
2 December 12, 2002, at 9:13 o'clock a.m., at 1616 W. Adams,
3 Basement Auditorium, Phoenix, Arizona, in the presence of:
4

Michael O'Hara, Chairman

5 Roger Beal

Elijah Cardon

6 Shannon Davis

Theresa Foster

7 Harold Gill

Tamara Huddleston

8 Myron Smith

9 ABSENT MEMBERS:

10 Michael Denby, Vice Chairman

Karen Holloway

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1 Phoenix, Arizona

December 12, 2002

2 9:13 o'clock a.m.

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

5 CHAIRMAN O'HARA: I'm going to call this
6 meeting to order. Good morning and welcome to the
7 December meeting of the UST Policy Commission. And first
8 order of business would be a roll-call starting on my left
9 with Ms. Foster.

10 MS. FOSTER: Theresa Foster.

11 MS. DAVIS: Shannon Davis.

12 MS. HUDDLESTON: Tamara Huddleston.

13 MR. BEAL: Roger Beal.

14 CHAIRMAN O'HARA: Michael O'Hara.

15 MR. SMITH: Myron Smith.

16 MR. GILL: Hal Gill.

17 MR. CARDON: Elijah Cardon.

18 CHAIRMAN O'HARA: Great.

19 Moving on to Item 2, it will be administrative
20 issues. We need to approve the minutes from October and
21 November, the last two Policy Commission meetings. Has
22 everyone received a copy and had a chance to read the
23 minutes? Any changes? Motion?

24 MR. SMITH: I move that the minutes be
25 accepted as written.

1 MS. DAVIS: Second.

2 CHAIRMAN O'HARA: For both October and
3 November?

4 MR. SMITH: Yes.

5 CHAIRMAN O'HARA: All those in favor of
6 approving the minutes for October and November say aye.
7 Those opposed, nay. The motion passes.

8 Let's move on to Item No. 3, ADEQ updates.
9 First item is an update on the State Assurance Fund.
10 Would anyone from DEQ like to give a presentation?

11 MS. NAVARRETE: Yeah, I would. We had a
12 very good month last month. We got out 112 interim
13 determinations and 52 appeal determinations. I think
14 these are going wonderful, and we owe a lot of that
15 success to the regulated community who has helped us.
16 When we fax and ask for information, they have been very
17 cooperative in trying to provide that information so that
18 we can get out these determinations in a timely manner.

19 And, also, I wanted to let you know that the
20 forms and even the draft waiver form is up on the Internet
21 now; so if you go to the administration SAF, you can click
22 on State Assurance Fund forms and it will take you to a
23 little list of forms. And hopefully, we'll have the new
24 cost ceilings up there within the next few days.

25 So that's the update except for I would like

1 everyone to remember that December will be, like, a
2 three-week month instead of a month because people are
3 going to be taking time off at the end of the year and the
4 holidays. And they wouldn't let me cancel Christmas to
5 work through it. So we'll have a few less days in
6 December than we did in November to get determinations
7 out. But we're still pressing to get as many out as we
8 can.

9 CHAIRMAN O'HARA: Thank you. If I read this
10 correctly, in November you got 112 interim determinations
11 issued and 48 applications received. So I know it is too
12 early to make projections. You got 64, basically, more
13 applications out the door than you got in. So that's
14 addressing the backlog of the 64 you got out.

15 Any questions, comments from members of the
16 committee?

17 MS. FOSTER: Mr. Chairman, what is meant by
18 "active" versus "inactive"?

19 MS. NAVARRETE: "Active" is they haven't
20 closed. They haven't gone through all the appeal process
21 and everything so we can close them out of our inventory.

22 MS. FOSTER: So they haven't been paid?

23 MS. NAVARRETE: They could have been paid,
24 but you still have an appeal process to go through.

25 MS. FOSTER: Okay.

1 CHAIRMAN O'HARA: Payment won't really
2 matter, right, because you could have one that's got a
3 final determination and closed but it may take three years
4 to pay and that will be inactive, right, even though it
5 needs a check? It is inactive from the standpoint of the
6 review has been done?

7 MS. NAVARRETE: Actually, we can close them
8 out of here once all the appeal processes is over.

9 CHAIRMAN O'HARA: And then the check may
10 come two years down the road?

11 MS. NAVARRETE: Right, right.

12 CHAIRMAN O'HARA: Great. Any other comments
13 from the Commission members?

14 Anyone from the public like to make comment on
15 the SAF update?

16 MR. BECK: How many appeals --

17 CHAIRMAN O'HARA: I want to recognize Leon.

18 MR. VANNAIS: Leon Vannais. Right now
19 "active" is being described as -- I think it was my
20 impression, I don't know how many other people's, but
21 "active" was you received the application and then the
22 initial determination goes out the door. Is that active?
23 Are you including in your active list those things that
24 have an initial determination and then continue through
25 the appeal process? Or does it become inactive after you

1 issue the determination?

2 MS. NAVARRETE: After the final
3 determination and there is no more appeals --

4 MR. VANNAIS: No more informal appeals?

5 MS. NAVARRETE: -- I consider inactive,
6 yeah.

7 MR. VANNAIS: And --

8 MS. NAVARRETE: No more appeals, period.
9 The appeal time is over, whether it is informal or formal.
10 Then it is inactive because up until that time, we could
11 have to have an activity on it.

12 MR. VANNAIS: Are you tracking the informal
13 appeals separately?

14 MS. NAVARRETE: We have a spreadsheet that
15 we track appeals on, yes.

16 MR. VANNAIS: Okay. And that's being
17 reported to the Policy Commission. In other words, I
18 think one of the criteria was look at how many
19 determinations.

20 MS. NAVARRETE: They had asked for
21 originally, Leon, a report. And we're working on that in
22 the database. They had given me three months to try and
23 get that organized, and we're working on it.

24 MR. VANNAIS: Okay. Thank you very much.

25 CHAIRMAN O'HARA: Mr. Beck, state your name

1 for the record.

2 MR. BECK: She just explained they don't
3 know currently how many appeals had been filed.

4 CHAIRMAN O'HARA: What I understood you to
5 say is you need a couple months to work on a report, and
6 you are going to come back.

7 Any other comments from the public? Great. We
8 are making a lot of progress.

9 Let's move on to Item 4. It is a technical
10 subcommittee update. I will turn this over to Hal, the
11 technical subcommittee chairman.

12 MR. GILL: We had a technical subcommittee
13 meeting on the 8th -- no, 3rd of December; and the main
14 purpose of which was to go through the final comments and
15 concerns and questions on the cost-ceiling documents which
16 are basically three documents: Introduction, the general
17 notes, and then the cost-ceiling item tasks.

18 And we gave -- we raised questions and concerns.
19 We discussed them in the meeting. We reached consensus,
20 and then we waited until we got the language back on the
21 final changes to see -- make sure that everybody
22 understood what they had reached consensus on. And I had
23 reports from owner-operators and other consultants that
24 had been in the meeting and also that had not been there
25 but read the documents when they came out. And we all

1 agreed that the language was as we had discussed it.

2 And so, basically, I move that we accept the
3 cost-ceiling documents as written in whole.

4 CHAIRMAN O'HARA: Any discussion from the
5 committee members on the 2003 cost-ceiling document?

6 Anyone from the public care to comment on the
7 2003 cost ceilings before we make a vote? Okay.

8 We have a motion to approve them. Second that?

9 MR. SMITH: I move to -- Do we have a motion
10 or a second?

11 CHAIRMAN O'HARA: He moved to approve them.
12 The motion is on the table.

13 MR. SMITH: I'll second them.

14 CHAIRMAN O'HARA: We have a motion and a
15 second to approve the 2003 SAF cost-ceilings document.
16 All those in favor please say aye. All those opposed say
17 nay. Anyone abstain? Passes unanimously. Thank you.

18 MR. GILL: They go into effect the 15th, I
19 think.

20 Judy, are we correct that the cost ceilings will
21 go into effect on the 15th --

22 MS. NAVARRETE: Yes.

23 MR. GILL: -- of this month?

24 MS. NAVARRETE: Yes.

25 CHAIRMAN O'HARA: Go into effect, okay.

1 MR. GILL: And basically, just to reiterate
2 there, we took the 2000 cost ceilings. They will add a
3 cost-of-living increase to the ones that will remain as
4 tasks, and many of them we took off as tasks and made them
5 time and materials.

6 CHAIRMAN O'HARA: Just curious. Why
7 wouldn't they go into effect January 1st?

8 MR. GILL: Because, I think, the 15th was
9 the date that had been established.

10 MS. NAVARRETE: That was -- statutorily
11 December 15th is the day we have to adopt them.

12 MR. GILL: There is going to be some time
13 period where we're going to have to work real -- the
14 stakeholders and the Department are going to have to work
15 close together to try to figure out how to make the two --
16 well, the programs mesh because it's a big change going
17 into a lot of time and materials. And then we have many
18 that are continuing on the 2000 through 2002 cost
19 ceilings, which are all tasks for the most part. So it's
20 not an easy task, so to speak.

21 MS. DAVIS: Mr. Chairman, I am wondering
22 what we've set up, as the issues arise, to mesh the two.
23 What vehicle are we going to use? Are we going to use the
24 technical subcommittee to bring issues up? How do we --
25 I'm interested in the communication issue so that there's

1 a process and everybody knows what that is to find out.

2 MS. NAVARRETE: It depends on when the
3 application was submitted as to what it falls under.

4 So --

5 MS. DAVIS: So it's that clear? It is just
6 when the application came in and one would fall under the
7 cost ceilings that are operational now. And then after
8 the 15th, they'll fall --

9 MS. NAVARRETE: Under the new cost ceilings.

10 MS. DAVIS: It is that simple?

11 CHAIRMAN O'HARA: Say that again.

12 MS. NAVARRETE: Cutoff dates for cost
13 ceilings.

14 CHAIRMAN O'HARA: It is work performed or
15 contract?

16 MS. NAVARRETE: Contract date.

17 MS. DAVIS: So does that --

18 MS. NAVARRETE: The contract date delineates
19 what date -- the cost ceilings that they fall under.

20 CHAIRMAN O'HARA: Does that make sense?

21 MS. DAVIS: It does. I'm looking at Leon.

22 I think it is real important for everybody in the room on
23 the Policy Commission, staff, and stakeholders to be on
24 the same page about it. If we could do that here, that's
25 great. I think there is a question.

1 MS. NAVARRETE: Would you like John to --

2 MS. DAVIS: Walk us through it.

3 MS. NAVARRETE: -- to detail that?

4 MR. ALSPACH: For the record, my name is
5 John Alspach. I'm with the State Assurance Fund. In
6 accordance with A.R.S. 49-1054, Subsection C, the cost
7 ceilings in effect on the date that a contract for the
8 work performed, or in a few cases to be performed,
9 determines which cost ceilings or cost guidelines are to
10 be utilized. The Department has taken the position for
11 many years that with pre-approvals, it is the date that
12 the Department receives the pre-approval application that
13 is used because we have no way of knowing what prospective
14 contract may exist.

15 However, if a contract for that work that is
16 part of the pre-approval does exist, we will use the
17 contract date covering that work. So we should have
18 bright lines as to which cost ceilings or guidelines apply
19 under each application. And the Department does have a
20 form for owners and operators and volunteers to indicate
21 whether or not a contract for that work exists and if one
22 does exist, when that contract was entered into to conform
23 to 1054(c).

24 MS. DAVIS: Mr. Chairman, John, thank you
25 very much. Thanks.

1 CHAIRMAN O'HARA: Any other questions or
2 comments on the 2003 cost ceilings?

3 Mr. Vannais.

4 MR. VANNAIS: Leon Vannais. This is a
5 slight departure from what I understand from previous
6 years where we are looking at the contract between the
7 applicant and the consultant and submittal of a work plan.

8 And I'm just kind of wondering, the work-plan
9 scope can change significantly through the review process.
10 So the actual contract to do that work is not finalized
11 until ADEQ grants approval of that work. Will the
12 Department recognize contracts that are entered into upon
13 approval of the actual work so that the owner-operator or
14 applicant can contract an environmental consultant to
15 do -- or to implement that work plan? Or is it from the
16 date that it's submitted to produce and implement the work
17 plan?

18 In other words, is ADEQ guessing the consultant
19 that produces the work plan is also the consultant that's
20 under that contract to perform that work?

21 MR. ALSPACH: It depends on the terms of the
22 contract.

23 MR. VANNAIS: It is a case-by-case basis?

24 MR. ALSPACH: We will use the date the
25 pre-approval application is submitted unless the applicant

1 can say that they have entered into a contract for that
2 work and if they have entered into that contract prior to
3 the submission date, submit the date they entered into
4 that contract.

5 MR. VANNAIS: How about if they enter into a
6 contract after the date of the submittal of the work plan?

7 MR. ALSPACH: Then we would use the cost
8 ceilings in effect on the date the application was
9 submitted.

10 MR. VANNAIS: Thank you.

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

13 Hal.

14 MR. GILL: Actually, one thing that Myron
15 just asked me I need to bring up, when the 2003 cost
16 ceilings first came out, they were completely different;
17 and we knew that based on all the discussion that we were
18 not going to be able to get those done -- the original
19 2003 by this time period. And so that's when we all met
20 and did what we did with the 2003s.

21 But we were also led to believe that we are
22 going to start working at some point on what was the
23 original 2003s, which I assume will be the 2004s. Are we
24 still going to do that, or does the Department want to let
25 the way the 2003 is in place run and see how that works?

1 Because, again, for statute, you have to up, like, three
2 years. But do we want -- which way do we want to go?

3 MS. NAVARRETE: That's something we can work
4 on.

5 MR. ROCHA: I think we can look at and see.
6 Obviously we need to let this one run a little bit and see
7 how it works. And then if -- but not losing sight that we
8 may need to tweak it. And so we are prepared to do that.
9 But I am not -- I'm not going to say we are prepared to
10 start working on it tomorrow because we haven't even given
11 this an opportunity to show what it's going -- what the
12 effect is going to be.

13 MR. GILL: If unforeseen problems come up,
14 that we are seeing lots of issues --

15 MR. ROCHA: Then we need to attack those
16 immediately. My belief and staff's belief is, basically,
17 we need to attack issues as they come and as quickly as
18 they come.

19 MR. GILL: The next -- Well, in that same
20 meeting, we also looked at one of the first policy
21 documents as part of the decision log review process,
22 whatever we want to call it, which was the policy
23 verifying and confirming of UST releases which, I think,
24 it's generally known as the LUST number assignment policy.

25 And what we did in that meeting is we -- again,

1 the stakeholders expressed their concerns and DEQ noted
2 those, and they went back to work on that. And it's on
3 the agenda for the next technical subcommittee meeting.
4 And I guess I can bring that up now. One of the handouts
5 that the Policy Commission received -- Were they up in the
6 back too, Al, the meeting date schedule?

7 MR. JOHNSON: I believe so.

8 MR. GILL: The meeting dates and room and
9 everything have been assigned for both technical
10 subcommittee and the Policy Commission meetings. And so
11 we -- and unless something happens similar to this meeting
12 here where we have to change it, this will be the
13 schedule.

14 All of the technical subcommittee meetings
15 starting January 8th are in the Capitol, first floor
16 conference room in the Capitol. And with the exception of
17 February, they are all on the second Wednesday of the
18 month. February 13th, I think, is a Thursday. And it is
19 in the basement. The Grand Canyon Room is in the basement
20 of the Capitol.

21 So what we will be doing in each one of these
22 meetings is looking at decisions as they arise and that
23 are creating issues and discuss those and, as I have
24 explained in past meetings, look at the decision, discuss
25 it from both sides. DEQ and the stakeholders can raise

1 the concerns as we've done in meetings -- last couple of
2 meetings, and see if we can reach consensus on language or
3 an understanding of how it is supposed to work.

4 And if -- and then we will bring that to the
5 Policy Commission and say -- just basically let them know
6 we reached consensus on this and that it will be part of
7 the decision log. The ultimate purpose of the decision
8 log is that there will be something that both the
9 Department and the stakeholders can go to to see what a
10 decision on a particular decision or policy was. And this
11 is the way that it is generally going to be administered
12 by the Department.

13 If we cannot in the technical subcommittee
14 meetings reach consensus on an issue, then we will bring
15 it to the Policy Commission. And both the Department and
16 the stakeholders will have time to put forth their
17 arguments for or against that particular decision. And
18 then the Policy Commission can decide, first off, whether
19 or not it is an issue that affects all owner-operators and
20 is not a site-specific issue; and then, second, whether or
21 not we think -- vote on whichever way we think the Policy
22 Commission believes that decision should be adopted.

23 And as I said, we looked at the LUST number
24 assignment policy. That's with DEQ, and we'll bring that
25 up. That's the first thing on the agenda in the -- on the

1 January 8th meeting.

2 Item C, the update on the six-month review of
3 the corrective action guidance document, in the Policy
4 Commission meeting where the Policy Commission approved
5 the guidance document and, therefore, the guidance
6 document and the rule could move forward -- or either that
7 one or one right after the other, we determined because
8 the guidance document was a living document, that we
9 needed to revisit it periodically basically to make
10 changes that the decision log happens to bring up or
11 whatever we're seeing issues with during that time period.

12 And we decided that we could do it every six
13 months. From my -- from the date of the guidance
14 document, which was August -- the end of August,
15 August 20th, that would be -- the end of February would be
16 the six-month time period. So we'll probably the end of
17 February, beginning of March, start meeting to go through
18 the guidance document and hash out any things.

19 MR. DROSENDAHL: Yeah. This is Joe
20 Drosendahl from the UST corrective action section. Yeah,
21 if anybody from the regulated community has looked at the
22 guidance document, noticed changes that they think need to
23 be changed, I would definitely suggest they start writing
24 those down and submitting those to the Department as soon
25 as possible. That way we can collate all the changes that

1 are being requested, and then we can start work on it
2 sooner.

3 MR. GILL: Many of these issues will overlap
4 with the decision document or decision log because --
5 Well, actually, there was a list of parking lot issues
6 that we made when we were going through the guidance
7 document. And those are the -- those issues are some of
8 the first ones that were going to be addressing with the
9 decision log in the subcommittee meetings. So there will
10 be some overlap.

11 And if it is an issue that cannot wait for the
12 six-month review, then definitely bring it forward to
13 the -- for the decision log meeting so we can address it
14 right away if it is, indeed, causing lots of problems.

15 And I have been doing internal training on the
16 guidance document, so I have been going through it in
17 detail. And I found some things that we really didn't
18 think about when we were originally going through it that
19 are little tweaks with the forms and things like that I'll
20 bring up. And I'm sure other people as they are using it
21 will determine -- or find issues. So as Joe said, be sure
22 to bring those forward.

23 And I think D says SAF decision log. I know
24 that Judy had called me and had something that she's
25 putting in place. We need to try to figure out how to

1 coordinate the SAF and corrective actions because,
2 basically, the decision log is going to affect both. And
3 we need to -- many of them and most of them do overlap.
4 And the SAF issues may end up coming about because of an
5 issue in corrective action. So we need to coordinate
6 these somehow.

7 But if -- Judy, if you're -- if you can expand
8 on the decision -- the SAF decision log that you called me
9 on, what you are putting in place.

10 MS. NAVARRETE: Well, I thought we would run
11 it by the technical subcommittee before we put it in place
12 and actually put it on the map. But we had come up with a
13 little better presentation, so to speak, and that is to
14 get it to us from the SAF. But I wanted to call it UST,
15 CAS, SAF bulletins instead of decision log and do it like
16 a bulletin like the rest of the state agencies do where
17 you click on the bulletin and then it goes to a bulletin
18 page where it's numbered.

19 And you have a little -- it tells you how to use
20 it and how to link to and a description of what these
21 bulletins are for. Then once you click on that
22 bulletin -- which will make it easier to find than the
23 first format I came up with, a spreadsheet which would
24 just be impossible to find what you are looking for.
25 This, I'm hoping, we can search by topic. I will have to

1 coordinate with the Internet people and see if we can set
2 that up. And then it will take you to the page that will
3 have all -- everything on there that we had on that
4 spreadsheet just in a better format so that you can just
5 print out that one bulletin if you want it. And maybe you
6 can keep a book in your office of the bulletins. They are
7 on the Net for you.

8 MR. GILL: This is basically the decision
9 log -- what we have been calling the decision log. This
10 is ultimately what it's going to end up after all the
11 discussion and everything.

12 MR. ROCHA: Right. What we are suggesting
13 is to call it a bulletin, technical bulletin, whatever you
14 want to call it, because it is more of an informational.
15 And because of all of the things we were talking about,
16 that it might hold up the process, we felt this would be
17 the best name and the best title for it to move it
18 forward.

19 Also, we are looking at the numbering scheme,
20 that the bulletin number would have some smart number,
21 that it might relate to the year so that, let's say, 2002s
22 would have 2002021, -022, so that when we flip to '03, you
23 would have the smart number and you can find them by
24 numbering and by date of issue. That's what we're talking
25 about.

1 MR. GILL: Okay. What I'll do is I'll add
2 this presentation to the agenda for the January 8th
3 meeting. And then we can bring forward to the Policy
4 Commission what comes out of that as far as the documents
5 and stuff.

6 MS. NAVARRETE: Okay. Thank you.

7 MS. FOSTER: Hal, Mr. Chairman and Mr. Gill,
8 why are we trying to call it something else when it is a
9 SAF decision log. Why do we call it a bulletin? I'm
10 thinking of an owner-operator searching the Net. They are
11 going to see a bulletin. They are going to have no idea
12 what it means. If we call it a SAF decision log, then
13 they will know what it means.

14 MR. ROCHA: Again, the reason that I
15 suggested changing the title for it is, again, decision
16 logs caused a lot of discussion as to what is a decision,
17 what is guidance, what is a rule, what is policy, what is
18 procedure, and all of that. And in trying to avoid that,
19 I think that we can put some words in front of the site
20 and a description that says, These are guidelines that are
21 being issued, technical decisions or technical
22 interpretations or whatever we want to call them, that the
23 users will be able to interpret and arrive at the same
24 answer without calling it a "decision." It's more of a --
25 I'm afraid of a technical-legal issue that we are going to

1 get involved in if we call it a decision.

2 MS. FOSTER: I'm more worried about the
3 owner-operator trying to find it and not know it's called
4 a bulletin.

5 MR. ROCHA: I agree. If we have some
6 educational programs and discussions, I think that that
7 will help a lot.

8 CHAIRMAN O'HARA: Elijah.

9 MR. CARDON: Just by way of information, I'm
10 kind of tracking on the point that has been raised. I
11 wonder if there are any English majors in the group. But
12 the simple -- isn't the simple reality that the word
13 "decision" is simply that, a decision. But that does not
14 really denote it is a decision on what. It's like -- it's
15 kind of a nondescriptive word. It refers to some thought
16 process or action. I mean, I don't have a dictionary in
17 front of me. But "decision" really doesn't denote
18 anything. It is like I took a drink, but of what? Well,
19 I made a decision, but on what?

20 And I would -- as a member of the Commission, I
21 would like to suggest that, is there a specific area that
22 we are trying to track? And you made reference to
23 specific legal terms like "guidance," like "rule," like --
24 So what are these decisions concerning? That would be my
25 question. And then I think that the reference should -- I

1 would like to suggest that the reference should be to that
2 area specifically.

3 Excuse me for taking so much time. May I ask a
4 specific question? These decisions have to do with what
5 area? How would you describe the area in which the
6 decisions are taken?

7 MS. DAVIS: Mr. Chairman, if I may.
8 Mr. Cardon, I think at the very beginning of this, Judy
9 said she wanted to run this through the technical
10 subcommittee. And I think these are all really good
11 issues. What I would like to see in sort of establishing
12 a process where we discuss things more fully, if the
13 technical subcommittee could take it back, vent all the
14 issues, and then bring it back and answer all these
15 questions with the Policy Commission. That would just be
16 my suggestion with how to deal with that.

17 MR. CARDON: And as a little further word,
18 there may very well be decisions that have to do with the
19 interpretation of rule. There may be decisions that would
20 be included in this log that would have to do with policy.
21 And there would be decisions that might have to do with
22 other things.

23 And I would simply think that would be a great
24 idea to take that to the technical subcommittee. And I
25 would think that we could more accurately describe exactly

1 what it is that a person would like to reference so that
2 it can be defined and more readily available.

3 CHAIRMAN O'HARA: Good suggestion.

4 MR. GILL: I would ask that Tamara or
5 someone that understands -- because I think Tamara raised
6 it last meeting, because we were kind of trying to go
7 around the policy issue. But if it is a policy -- if it
8 is a substantive policy, it is a substantive policy. I
9 don't know if changing the name is going to help. And
10 that's why in the last meeting I kind of brought it up,
11 Well, what is the process that the DEQ has to go through?
12 How long is it going to take if it ends up being a
13 substantive policy? I think Tamara was right. If it is
14 substantive policy, it is substantive policy. We have to
15 go through the process we have to.

16 We don't want to stop things. I don't know if
17 that was one of the reasons for changing the name. I know
18 I was discussing it just recently with DEQ that
19 "determination" has a particular definition, I think, in
20 statute, in state government. I don't know that
21 "decision" does. But that's why I would like someone
22 there in the technical subcommittee that could address
23 these issues so we'd know. We can waste our time and
24 decide "decision" is fine or "bulletin" is fine and then
25 come to find out, it still doesn't matter because it has

1 to go through the substantive policy process.

2 MR. CARDON: Just a little footnote. I
3 guess what I'm saying is, as a layman and if I were trying
4 to identify what action or decisions had been taken, it
5 would not be real helpful to me to have a whole huge
6 amount of action described under some definition known as
7 "decision." What I'm suggesting is that there are
8 decisions that affect policy. There are decisions that
9 affect procedure. There are decisions that affect other
10 legally identified areas within the Department. And I
11 would think that we ought to define it better. That's all
12 I'm saying.

13 MR. ROCHA: Could I just --

14 MS. HUDDLESTON: You'll have to forgive me
15 because until the last meeting, I didn't even know DEQ was
16 creating decision logs because I haven't been working in
17 this area. But every action DEQ takes is as a result of a
18 decision.

19 MR. CARDON: Sure.

20 MS. HUDDLESTON: I don't really know if
21 that's what you want to call this. It depends on what you
22 call something and at what point in the circumstances
23 surrounding it as to what has been designated by
24 government in some way as to what you call it. A
25 "guideline" is a decision. We call it a guideline because

1 it has an intended purpose. A "decision" in a specific
2 action, as I'm sure everybody in this room knows, may
3 become appealable because we've called it a "decision."

4 A "bulletin" is used to provide information, but
5 the information that's being provided is a decision that
6 somebody has made. But we call it a "bulletin" because we
7 are providing the information, not because we are making a
8 decision that affects every person reading it. So it
9 depends on what DEQ wants to do with this matter. I'm
10 going to have to sit down with Judy and learn more about
11 it before I can give you more than my general discussion
12 here.

13 MR. GILL: The statement you just made makes
14 all the difference in the world as far. As the way I
15 originally envisioned this decision log is that we were
16 saying that there were decisions being made in appeals, in
17 internal meetings, in whatever, that were, indeed,
18 affecting all owner-operators. And so if calling it a
19 bulletin -- Well, let me backtrack.

20 And so we wanted to get those decisions on a log
21 so everybody knew this is what needed to be done from this
22 point on because we were having appeals on that particular
23 one but then everybody else was still doing it -- the way
24 they were doing it, it had to be appealed by every other
25 consultant and owner-operator, too, because they did not

1 know of this decision that was affecting their work.

2 So we needed to come up with some sort of format
3 to get this information out that everybody could see on
4 both the regulated side and the regulators that this is
5 what we are doing from this point on because it was real
6 inconsistent. But if calling it a bulletin takes away
7 from the fact that it is affecting all owner-operators
8 and, therefore, it needs to be done, then we don't want to
9 call it that.

10 MS. HUDDLESTON: Calling it a bulletin may
11 not so affect it.

12 MR. GILL: That's why I needed someone that
13 would know that when we are discussing this.

14 MR. ROCHA: May I suggest basically, again,
15 all of these are very good points. And we are more than
16 glad to sit down at the technical subcommittee. I think
17 that would be a more appropriate time to do this and
18 explore all of these. And then we can bring our
19 interpretations or our feelings jointly, kind of work them
20 over as to what we need to do.

21 MR. GILL: I have that down to be on the
22 agenda for the 8th meeting.

23 MR. ROCHA: I just don't -- don't want to
24 get into a discussion that really we're not all prepared
25 to address at this point.

1 MR. GILL: Sure. I will move on to E. This
2 is basically the proposed agenda items for the 8th of --
3 January 8th technical subcommittee meeting. What I'm
4 going to do in each -- since we are holding these
5 technical committee meetings on the second Wednesday of
6 every month, with the exception of February, and then my
7 understanding is that the Policy Commission meetings are
8 on the fourth Wednesday of every month, that gives us two
9 weeks to compile our notes and stuff and be able to
10 present it to the Commission.

11 But what I am planning on doing is in the Policy
12 Commissions, I will propose certain agenda items. As I
13 said, I took one or two of these right off the parking lot
14 issues that were raised during the -- going through the
15 guidance document. And that way we can at least know
16 what's going -- it gives DEQ time to start preparing for
17 the technical subcommittee meeting that's coming up in a
18 couple weeks as well as stakeholders that want to bring
19 information to the table also.

20 So what I had -- Again, these are proposed and
21 other things can be added. Whether or not we get through
22 them all remains to be seen. But people can call or
23 e-mail me, and I'll add agenda items to the meetings. But
24 basically, the ones I have proposed, we will be revisiting
25 the confirmation of the UST releases policy.

1 Phil, do you know, will it be ready in time for
2 this meeting; do you think?

3 MR. McNEELY: I'm Phil McNeely from DEQ. I
4 thought you guys were going to be reviewing the two
5 policies that Al provided you in an e-mail and having --
6 getting any other comments, that you could provide those
7 to us, because you needed to compare to the current
8 policies.

9 MR. GILL: To see if we had any more
10 comments?

11 MR. McNEELY: I don't think we were going to
12 go and prepare the documents until you guys reviewed those
13 and see if there were any additional comments, and then
14 we'd review it all at once.

15 MR. GILL: Then I'll probably -- this will
16 probably be on the next meeting then. That's the other
17 purpose for doing this because we find out when we are not
18 going to have things on the agenda.

19 That will probably move forward to the -- I hate
20 to keep putting it off a full month, though. That's the
21 problem with having a discussion a full month -- because
22 this is a really important issue. This is basically
23 assigning the LUST numbers. I really hate to put it off.
24 Rather than saying that I'm going to have it off, I'll get
25 an e-mail out to the stakeholders and consultants and tell

1 them to get comments in immediately because we would
2 really like to have -- to be able to discuss this on the
3 agenda because I really hate to keep putting it off a full
4 month every time. And I don't want to have meetings in
5 the middle, if we don't have to, because we have this
6 meeting in the middle. So let's leave it on there for
7 now, and I'll send out a thing to get people to respond
8 ASAP so we can get something written.

9 Another one -- And these are real general. In
10 the technical subcommittee agenda, I will detail more than
11 is seen here. But there is groundwater modeling and
12 sampling issues that was on the parking lot list and data
13 reporting. Some of these were old items for the data
14 reporting. Other ones have come up because of the new
15 procedures and forms and requirements under the rule. So
16 those are three that I had. And then I will add the
17 discussion on the decision log bulletin, whatever it's
18 going to be.

19 Okay. I think I'm done.

20 CHAIRMAN O'HARA: Thank you, Hal.

21 Are there any comments from the public? Anyone
22 like to comment on any issues from the technical
23 subcommittee? Mr. Beck.

24 MR. BECK: Brian Beck again. There is
25 actually three different issues going all the way back to

1 August and last month. Again, we were asking about
2 Appendix P. That was supposed to be done for the
3 corrective action guidance. We still haven't heard any
4 word on when that will be available.

5 MR. GILL: Which one?

6 MR. BECK: Appendix P. That's supposed to
7 have all the ADEQ equations and procedures that they were
8 going to utilize for the risk-assessment stuff.

9 Then something that we were just notified of
10 last week, that there appears to be a change in the formal
11 appeal policy or procedure with ADEQ. Over the last eight
12 weeks, we have filed 14 formal appeals of which we found
13 most -- or eight of them have been rejected because they
14 haven't followed a new appeal process to where it has to
15 go to ADEQ as well as the AG's Office. And so we got it
16 in writing last week. We were not aware of that, nor have
17 I talked to anybody that has been made aware of this new
18 formal appeal process. We would like to see something in
19 writing sent out to everybody on this whole new procedure.

20 CHAIRMAN O'HARA: Is anybody familiar with
21 that change in policy?

22 MR. ROCHA: No.

23 MR. BECK: I'll send you copies of the three
24 e-mail rejections saying the stuff is not accepted because
25 we did not follow the procedure where it goes to

1 Ms. Watkins and to the AG's Office. That's part of the
2 documentation that we received last week in one of the
3 appeal notifications.

4 CHAIRMAN O'HARA: Is that what the statute
5 says to do and the letter says to do?

6 MR. BECK: That's what the letter says to
7 do, but it is a total change from anything we have ever
8 done before.

9 MR. CARDON: Mr. Chairman, it will be
10 helpful, I think, to members of the committee if any
11 additional information on such items could be provided,
12 like, for example, was it a letter over the signature of a
13 Department head? I mean, who? Do you have any of that
14 information here?

15 MR. BECK: No. I left that file on my desk.
16 I was going to bring it in, but I hadn't made copies for
17 everybody.

18 MR. GILL: I'm wondering if these comments
19 shouldn't be down on for next month's meeting or something
20 like that because this isn't something I would --

21 CHAIRMAN O'HARA: You want to hold that
22 until appropriate.

23 MR. GILL: -- necessarily bring up in the
24 subcommittee, that particular issue anyway. The
25 Appendix P, well, I can't bring it up in my subcommittee

1 until I have something to review. Basically these two
2 issues wouldn't be something I would put in the
3 subcommittee meeting.

4 CHAIRMAN O'HARA: Any other comments?

5 MR. TREMBLY: Jeff Trembly, for the record.
6 I would just like to make a suggestion, in looking at the
7 SAF decision log, that people go on the Internet and look
8 at the Aquifer Protection Program. They had a huge set of
9 rules passed a while back. They have been posting -- I
10 don't know what they call it, whether they are
11 clarifications or bulletins or things like that.

12 What they present is how the Department is
13 interpreting some small portion of rule where conflicts or
14 questions come up. And they have actually posted already
15 clarifications of clarifications. But anyway, there is a
16 whole series of these things that go along with the new
17 APP rules. They are very easy to use. They are in a very
18 nice format. I would suggest if we are going to talk
19 about these at the technical subcommittee meeting, that
20 everyone review the APP process beforehand just as an
21 indication of how it can be done.

22 CHAIRMAN O'HARA: Any other comments?

23 MR. MERRILL: Fred Merrill. Mr. Chairman,
24 as you consider the bulletin versus decision log, I think
25 it would be relatively simple to just go ahead and define

1 what the decision log is within the decision log. And,
2 therefore, there is no confusion as to any conflict of
3 rule, policy statement, guidance, or anything else because
4 you are defining the term.

5 CHAIRMAN O'HARA: Mr. Vannais.

6 MR. VANNAIS: Leon Vannais. Chairman, we've
7 also seen the policies that already have been approved and
8 applied to the ADEQ. One of the policies is what is a
9 policy. So I think Mr. Merrill's idea is very good.

10 I think what we've also been noticing is that
11 we've got a new release reporting for a release allocation
12 rule being proposed and putting forth -- put forth in
13 front of the technical subcommittee and the Policy
14 Commission that supersedes two previous policies that
15 currently are still on the books.

16 And looking into it a little further, we've seen
17 policies be withdrawn from the substantial policy list for
18 ADEQ over time. And I would just like to point out that
19 withdrawal of a policy without input from the public or
20 from the UST Policy Commission or whatever other agency or
21 entity is responsible for maintaining those lists, the UST
22 Policy Commission also look at what is being withdrawn.

23 When you withdraw a policy, that can be -- can
24 have an effect just as much as implementing a policy in
25 some cases. It is very unclear of how that's occurring or

1 under what circumstances or under what authority these
2 particular policies have been withdrawn over time. And it
3 makes it very confusing for the regulated community
4 because we are alerted there is a policy. Then it is
5 withdrawn sometime in the future. But the regulated
6 community may not be notified that that policy is no
7 longer in effect.

8 So I'm hoping that through the UST Policy
9 Commission, they can maybe look into this a little further
10 and provide some kind of input so the regulated community
11 and the Department can all be on the same page.

12 MS. DAVIS: Mr. Chairman, point well taken.
13 Thank you.

14 MR. MERRILL: If I could -- Fred Merrill
15 again. If I could follow up on that, is there anyone here
16 today from the Department who could maybe tell me if there
17 is a procedure for withdrawing a policy statement?

18 MS. DAVIS: Mr. Chairman, Fred, there is a
19 process that the agency takes on internally to deal with
20 all policies. And there is actually a policy book, and
21 Tamara can give you all the legal words for it. I am
22 going to speak with words I understand. The lawyer will
23 tell you what they really are.

24 There is an internal process by which policies
25 are forwarded through the agency and then goes through a

1 policy review committee where there is pretty much senior
2 management. And that is usually directed by our special
3 counsel from the Attorney General's Office. And then
4 those are voted on, forwarded, and then signed by the
5 director. And the same process, Fred, would go for things
6 that are withdrawn as well up through that procedure. And
7 it is well defined. In fact, I believe a lot of those
8 policies are available on the Internet already. So it is
9 the same process to put it on as there is to take it off.

10 I think a missing piece here is the
11 communication with the regulated community. We have four
12 different levels of policies. And it is either one or
13 four, so somebody could help me out. It is either
14 policies Number 1 or Number 4 that affect the outside
15 regulated community; and 1, 2, and 3 have more to do with
16 how we do business internally which, of course, affect the
17 outside but has much more to do with the internal
18 administration of the agency.

19 MR. MERRILL: If I could follow up on that,
20 Mr. Chairman, Shannon. In the statute it says that any
21 state agency shall have a copy of policy statements
22 available for review. Now, do you know if that -- if DEQ
23 has that document available? I know we are talking about
24 several divisions here. But where would one find that?

25 MS. DAVIS: Mr. Chairman, Fred, I believe --

1 And this is what I think right now, but I'll report back
2 next month. I'm not sure they are all posted on the Web.
3 I know that there was a movement to do that. But I'm
4 fairly certain you can get those in the library because
5 when I have been looking for them, I have gone to the
6 library. We have gone through -- when Director Schaffer
7 was director of the agency, she really made a concerted
8 effort to sort of jump start that policy. In fact, I sat
9 on that for a while. We withdrew a whole lot. We put
10 more into the book. And when I went to get a real copy, I
11 went to the library. Is that what you -- Okay.

12 MR. MERRILL: What would be the title of
13 that, Shannon?

14 MS. DAVIS: Probably ADEQ Policies. That's
15 what my book reads, is ADEQ Policies. Laurie Achey is the
16 librarian; and she would know how to work you through
17 stuff, Fred.

18 MR. MERRILL: Sure.

19 CHAIRMAN O'HARA: Mr. Vannais.

20 MR. VANNAIS: Leon Vannais again, for the
21 record. I'm aware and I appreciate the Department's
22 efforts or recognition of public notice as to when a
23 policy goes into effect and when a policy comes out of
24 effect, circumstances where a policy is issued on a
25 mass-mailing basis so the entire regulated community knows

1 about this particular policy. But then a policy withdrawn
2 without any kind of notification, how is the Department
3 going to deal with the regulated community who continues
4 to follow this policy as a matter of practice not knowing
5 that it has been publicly disseminated that this policy is
6 no longer in effect? Should we still follow those
7 practices, or should we no longer follow those practices?

8 And that's the position that some of us find
9 ourselves in in the regulated community because we think
10 these things are still in effect because we received a
11 mailing saying, This is a policy, you shall proceed. And
12 there is no issuance from the Department of the same kind
13 of document saying that this is not rescinded.

14 MS. DAVIS: Mr. Chairman, I think those are
15 really good points. And what I would like to see is when
16 we work through this decision log, this bulletin log,
17 however we want to -- however we end up calling that, that
18 maybe we use that as a vehicle.

19 But I think what's important, Leon, is people
20 happen to go to the technical subcommittee because we as
21 an agency need to know how to best reach you, the
22 regulated community. I can't sit here and tell you what
23 the best way is. So tell us that.

24 And as we go through the drill of the bulletin,
25 I think that would be a good vehicle, policy is withdrawn,

1 policy is added, all those kinds of things. It would be
2 my sense that the regulated community would want one place
3 to go to look at everything on the Web and then also gets
4 pushed into a process here. We want to meet your needs.
5 You tell us how we can do that.

6 MR. VANNAIS: Very much appreciate it.
7 Thank you.

8 CHAIRMAN O'HARA: Mr. Beck.

9 MR. BECK: Just a follow-up on Shannon's
10 lack of communication. When we go into the technical
11 subcommittee, the new release policy, everyone there in
12 that meeting was floored to find out the one that's being
13 proposed is to replace the two existing policies. We
14 thought it was going to be supplemental to. When I
15 contacted my clients, they were also floored that this is
16 a total replacement.

17 And, also, this policy is substantially poor and
18 it is not even replacing two-thirds of the points in the
19 two existing policies that are out there. So there is a
20 lot of work that needs to be done, but a lot more people
21 need to be notified of that.

22 I notified 23 people; and unfortunately, the
23 next meeting coming up, they are not going to be able to
24 attend because there is too short of a notice with the
25 holidays and things coming up. This is an extremely

1 important issue on the new release policy, especially if
2 it is getting rid of the old two existing policies.

3 Everyone, too, was also upset that the people
4 who created a large portion of the problem we are trying
5 to work through right now are working on these policies.
6 We have no confidence in ADEQ staff that's currently
7 playing with these policies because they created half the
8 problems we are dealing with now.

9 CHAIRMAN O'HARA: Any other comments from
10 members of the public? I'm going to go ahead and call for
11 a quick break, maybe ten minutes. Be back at 17 after,
12 according to my watch, 20 after.

13 (Whereupon, a recess was taken from 10:09
14 o'clock a.m. to 10:24 o'clock a.m.)

15 CHAIRMAN O'HARA: Welcome back. Moving on
16 to Item No. 5, the issue is the proposal for a statute or
17 rule change regarding the issue of volunteers not being
18 eligible for reimbursement of application preparation
19 costs. This issue has been on the agenda several times.
20 And in our last meeting, we voted and it was approved to
21 recommend to the legislature to change the statutes to
22 allow for volunteers to get reimbursement of application
23 preparation costs.

24 And at that time, a question was raised as to
25 whether or not a statute change was necessary because the

1 issue is that there is a co-pay that is applied to every
2 owner-operator. And that's what the application
3 preparation fees are credited against. That's how they
4 get reimbursed. Whereas, a volunteer, there is no co-pay
5 applied to them; and, therefore, their costs for
6 application preparation, there is no co-pay to take it out
7 of.

8 The issue was raised that there is a co-pay in
9 those circumstances for volunteers. However, that co-pay
10 should be collected from the original responsible party,
11 which I believe the Department has a right to go after and
12 get. So I think at the last meeting we left it off that
13 Shannon or somebody at DEQ was going to tell us why or why
14 not it was feasible to go after the co-pay from that
15 responsible party and then compensate the volunteers so
16 that maybe a statute change wasn't necessary.

17 MS. DAVIS: Mr. Chairman.

18 MS. NAVARRETE: Judy Navarrete, for the
19 record. I think those are two separate issues. One is a
20 cost-of-recovery issue. The other is a co-pay issue. And
21 I don't feel I'm the legal authority to address that.

22 MR. ROCHA: And, again, I think the
23 Department's position has been clear on this issue. And
24 it is a decision that you need to take as a group, and you
25 took that decision. And we really don't have anything

1 else to add to that.

2 CHAIRMAN O'HARA: So there is a policy
3 determination by the Department that you can't go after
4 that co-pay and give that money to the volunteer. Our
5 last vote, I think, would stand. Is there any changes?

6 Let me open it up to the public. Any comments
7 from members of the public? Mr. Beck.

8 MR. BECK: I didn't quite hear Mr. Rocha.
9 What was ADEQ's position then?

10 MR. ROCHA: Basically, the same position
11 that we have taken before, that the Department has no
12 standing to go after the recovery. So it's a -- it's the
13 same answer that we gave before, I guess, is the best way
14 to say it rather than trying to get into a lot of detail.

15 MR. BECK: Then I have two different
16 comments to make on that particular issue. One, the SAF
17 through the State Lead Program, which is funded by SAF, is
18 seeking co-payment from the SAF State Lead people. So
19 there is a mechanism already established through SAF for
20 cost recovery. That's one.

21 Two, under the initial set-up of this thing, how
22 it was originally done for UST volunteers, it is stated in
23 statute that they are supposed to get 100 percent
24 reimbursement of all costs. And it says in the forms,
25 June 6th, 2000, of the actual official forms from ADEQ

1 under SAF co-payment, "The Department will seek a
2 reimbursement from owners and operators of the 10 percent
3 co-payment." If you guys are crediting against the
4 co-payment, then all costs should be seeked against those
5 people and the volunteers should be paid. So the
6 mechanisms are already in place.

7 ADEQ is already doing and seeking reimbursements
8 on the SAF side through another program but still funded
9 through SAF. The mechanisms are in place. There is
10 hundreds of thousands of dollars, if not millions of
11 dollars, that have not been sought by ADEQ and the UST
12 volunteer program for people that are owners and operators
13 that should be seeked out. But nonetheless, the
14 volunteers should have all costs recovered. That includes
15 the co-pay.

16 CHAIRMAN O'HARA: Mr. Cardon.

17 MR. CARDON: I had understood that this --
18 we did take a formal vote to support the specific position
19 that you mentioned.

20 CHAIRMAN O'HARA: Correct.

21 MR. CARDON: Isn't that correct? I had
22 understood that our -- that at our last meeting there was
23 reference made to whatever they're called, statutes or --
24 I guess they were statutes or policies, that had not been
25 brought to light or that had not been fully reviewed by

1 the legal counsel for the Department. And it was my
2 understanding at the last meeting that the Department was
3 going to ask their legal counsel to review the specifics
4 that were mentioned at the last meeting.

5 Now, I know that things fall between the cracks.
6 We are not -- I'm not -- I'm not trying to throw any
7 rocks. I'm simply saying -- I'm simply asking the
8 question, Mr. Chairman: Did the Department have the
9 opportunity to review the information that was brought
10 before the Commission? And has there been a further legal
11 opinion expressed on the matter?

12 CHAIRMAN O'HARA: Good question. Shannon?
13 Tamara?

14 MS. HUDDLESTON: It is my understanding that
15 these are, indeed, two separate issues; that DEQ does have
16 the authority to seek a co-payment from a previous
17 responsible party at a site where a volunteer is working.
18 That does not automatically equate, then, to the volunteer
19 getting the fees for the -- or the costs -- being
20 reimbursed for the costs of the application. That is a
21 separate issue. Pursuant to statute, there seems to be no
22 authority currently in law for that to occur.

23 CHAIRMAN O'HARA: Under that scenario, we
24 would need to get statutory change.

25 MS. DAVIS: Mr. Chairman, yes, Mr. Cardon,

1 we did review that. This is a result of that. And our
2 recommendation is if this is something that the Policy
3 Commission wishes to see done, that it's splintered now
4 and that legislation would put it together and they
5 wouldn't be two separate issues. It would cover both
6 issues, which it is not doing. And that is our
7 recommendation to take care of it.

8 CHAIRMAN O'HARA: Understood.

9 Okay. More comments from the public? Mr. Beck.

10 MR. BECK: Brian Beck, again. Actually,
11 with the UST volunteers, this is just one or two, as the
12 case may be, issues concerning the volunteers. There is
13 19 separate issues that the SAF and the UST program have
14 brought up against the UST volunteers saying that they
15 can't or are not authorized to or whatever. And in the
16 original intent of the legislation, especially talking
17 with Mr. Guenther -- or Senator Guenther, that the UST
18 volunteers are supposed to have the same rights and
19 responsibilities as owners and operators, just the cost
20 was going to be the difference.

21 Therefore, the legislation should include the
22 change to make UST volunteers having the exact same rights
23 as the owners and operators as far as appeal issues, the
24 SAF filings, right on down the line. Also, including for
25 the upgrade -- I can't remember what they call it, for

1 changing the SAF from the half-a-million-dollar release to
2 the million-dollar release on the older sites.

3 CHAIRMAN O'HARA: Any other comments?
4 Questions?

5 MR. SORGEE: Vern Sorgee. Was your
6 recommendation on the proposed or the needed change in
7 statute, was that retroactive or for existing -- anybody
8 that is an existing volunteer or mediator that's
9 undergoing corrective action work? I mean, how -- or is
10 it from one point forward?

11 CHAIRMAN O'HARA: I don't really know -- the
12 recommendation didn't address that. It is more of a legal
13 issue when the law goes into effect whether it can be
14 retroactive. We just recommended that the legislature
15 take a look at the issue and resolve the statutes if there
16 is a conflict so that volunteers would get reimbursement
17 for those costs.

18 MR. SORGEE: I have got a couple of
19 volunteers, and I have completed site characterizations.
20 And every time they ask me, Well, why am I having to pay
21 this if it is supposed to be 100 percent? Why am I having
22 to pay for the cost of an SAF application?

23 CHAIRMAN O'HARA: That's what we are trying
24 to address in this recommendation

25 MR. SORGEE: And I just say, Well, it's

1 their policy. Over a couple of projects that go through
2 site characterization and then remediation, you may be
3 looking at 10- to \$12,000 for the applications that are
4 processed. So it is not a small amount of money.

5 CHAIRMAN O'HARA: I believe that's what our
6 recommendation is trying to address and remedy.

7 Do we want to make any adjustments to our
8 recommendation? Approve that and send it on to the
9 Governor, Senate, president of the Senate, speaker of the
10 House? Mr. Cardon.

11 MR. CARDON: Mr. Chairman, may we have some
12 discussion --

13 CHAIRMAN O'HARA: Sure.

14 MR. CARDON: -- on the point? I don't
15 see -- I think that the fact that some feel that the
16 language today is a bit ambiguous, perhaps, should not
17 influence the fact that it was the original intent. And,
18 therefore, the legislation, I would think, you would want
19 it to be retroactive to cover the whole program.

20 CHAIRMAN O'HARA: You want to move that we
21 amend that recommendation? I think it is a good point.
22 It shouldn't be time sensitive.

23 Is there any other discussion on that point?

24 MR. BEAL: I think it should be real clear
25 when we are finished here if there is other areas in this

1 volunteer program that are not being treated equally and
2 that was the intent of the legislation, that the volunteer
3 program should be 100 percent reimbursable and treated as
4 any other site. There is not the limits.

5 I don't know if there is other issues that are
6 going to come forward; but I think if we are going to go
7 back to the legislature, it should be very clear exactly
8 what this volunteer program is. And then it applies as a
9 normal-paid program. And whether it is retroactive or
10 not, I think that if you are denied -- because you have
11 been labeled a volunteer, that when your definition of
12 "volunteer" is redefined or implicitly defined, then you
13 should be eligible for the funds that are due you. And,
14 yes, that would back up.

15 MR. SMITH: Do we have any idea of what's
16 hanging out there in costs that have not been paid to
17 volunteers for application prep?

18 MS. NAVARRETE: About 6.5 million.

19 MR. GILL: That much in applications?
20 That's a lot of applications.

21 CHAIRMAN O'HARA: For volunteers?

22 MR. GILL: Just the applications?

23 MS. NAVARRETE: Just the application fees.

24 CHAIRMAN O'HARA: Wow.

25 MR. BECK: 6 million in --

1 CHAIRMAN O'HARA: In application
2 preparation.

3 MR. BECK: In costs? Unbelievable.

4 MR. CARDON: If you took -- Mr. Chairman, I
5 wonder if there is a semantic -- perhaps, there is a
6 problem here. If you took application preparation costs
7 of \$10,000 an application -- which I would think somebody
8 could get an application prepared for ten grand, couldn't
9 they? And 6 million divided by ten grand, what's that?
10 That's more applications than the whole --

11 MR. SMITH: Isn't the application \$1,000?

12 MR. BECK: About 890.

13 CHAIRMAN O'HARA: It maxes out about 1300.

14 MR. CARDON: Hold on just a minute. If
15 there is \$6 million and you divide that by the cost of --
16 Are we talking about 1,000 or 10,000?

17 MR. SMITH: We are talking about 6500
18 applications at \$1,000 an application.

19 MR. CARDON: Divide that because how many
20 applications is that?

21 MR. SMITH: That's 6500 applications. Six
22 and a half million divided by a thousand is 6500
23 applications.

24 MR. CARDON: Are there 6500 volunteers in
25 this state? 6,000?

1 MR. GILL: You can have numerous
2 applications. You just turn it in when you reach 25,000
3 or 20,000 or whatever.

4 MR. CARDON: Something doesn't click.

5 MR. GILL: It seems like an awful lot.

6 CHAIRMAN O'HARA: But whether it is
7 6 million or it is 600, it still seems to me it cuts both
8 ways. The issue is important. They should be treated on
9 the same footing. I think we all agree with that point.
10 I don't hear any dissension that they should be treated
11 the same as owner-operators. Do we want to incentivize
12 them or disincentive them to clean up their sites since
13 they are not the responsible party from a policy
14 standpoint?

15 MR. GILL: That was the issue.

16 CHAIRMAN O'HARA: Elijah.

17 MR. CARDON: I'm not technically informed
18 enough to, I'm sure, make the exact wording of a motion.
19 But I would like to suggest that we have a motion that
20 goes to the point that volunteers be reimbursed for their
21 application preparation and that they be treated the same
22 as other applicants.

23 CHAIRMAN O'HARA: So specifically mentioning
24 that portion we've already approved and then generally
25 amending it to say treating them on equal footing with

1 owner-operators and, to the extent possible, making it
2 retroactive. Is that general agreement?

3 MS. HUDDLESTON: If I may suggest an
4 amendment to the motion because that is not technically
5 correct. Other applicants are not reimbursed. They just
6 receive credit. They don't actually receive cash. It is
7 my understanding you want the volunteers to receive cash,
8 so you don't want them treated exactly the same.

9 MS. DAVIS: Right.

10 MR. SMITH: That's a good point.

11 CHAIRMAN O'HARA: I think that's semantics,
12 though, isn't it? They still get reimbursed even though
13 it is credited toward their co-pay. They get a check
14 back.

15 MS. HUDDLESTON: Law is semantics.

16 CHAIRMAN O'HARA: I don't want to get into
17 the legal aspect. I just want to get the concepts down.
18 We want them on the equal footing. So to the extent
19 possible, whatever an owner-operator gets, they should
20 get, to be treated the same as owner-operators.

21 MR. BECK: To treat the same as
22 owner-operators except when it comes to preparation costs.
23 They should get 100 percent reimbursement. It should also
24 be amended that the 10 percent co-pay should be formally
25 sought by ADEQ. Like I said, there is millions of dollars

1 there sitting that ADEQ has not gone after. The only
2 group that has gone after the SAF co-pay has been State
3 Lead.

4 CHAIRMAN O'HARA: That's a separate issue,
5 cost recovery. That's not what we are really dealing
6 with, whether or not they should.

7 MR. SMITH: I have a question.
8 Approximately how many volunteers are there?

9 CHAIRMAN O'HARA: Or what percentage maybe?

10 MS. NAVARRETE: I don't know that. I don't
11 know that.

12 MR. SMITH: I'm just trying to get back to
13 the 6500.

14 MS. NAVARRETE: On some sites, there is --
15 even for one leak, there is multiple applications and
16 there is an application fee associated with each
17 application. So if there is 20 applications on one leak,
18 that's 20 application fees on that one.

19 CHAIRMAN O'HARA: I agree with your
20 amendment. We probably should say -- leave it to the
21 details, that they should be on equal footing. The
22 problem is going to be if there is no co-pay, you almost
23 have to treat them differently.

24 MS. HUDDLESTON: You have to treat them
25 differently; otherwise, you are going to charge them a

1 co-pay.

2 CHAIRMAN O'HARA: We think they should be
3 reimbursed for application fees and with all other
4 respects be treated with equal footing as owner-operators,
5 unless there is an argument against it. I haven't heard
6 why it shouldn't be.

7 Mr. Beck.

8 MR. BECK: In 2000, I actually asked for
9 that number of volunteers in 2000. That was the only time
10 the number has ever been made available or kept track of.
11 There was 125 UST volunteers in 2000.

12 CHAIRMAN O'HARA: Anyone want to take a stab
13 at the motion? Continue discussion? Do we have
14 agreement?

15 MR. CARDON: We have agreement. Let's just
16 get on with it.

17 MS. FOSTER: We have one opening discussion
18 we haven't confirmed, retroactive or not? If we put that
19 into the motion, then the regulations -- all the statutes
20 need to be addressed because we could put something --
21 revise the statute in one area and it still would
22 contradict another area that says all SAF applications
23 have to be submitted within a year of the closure. So we
24 could be creating more problems by changing a different
25 area.

1 MR. BEAL: Help me out on that. Where's the
2 conflict?

3 MS. FOSTER: If you say in this area of the
4 statute that it's retroactive and you can file for things
5 ten years ago and you have another area of the statute
6 that says you can only submit SAF applications within the
7 first 365 days after closure, you are back into the same
8 problem again.

9 MR. BEAL: Wasn't that met? Wasn't that
10 filed way back then?

11 MS. FOSTER: But somebody might not have
12 filed if they knew they would not get reimbursed for the
13 SAF prep -- application preparation.

14 MR. GILL: They would have had to file to
15 get reimbursement for the work that was done, and they
16 wouldn't pass that up.

17 MS. FOSTER: True. That application might
18 not include that \$1300 for preparing the SAF application
19 because they knew they didn't get it.

20 MR. GILL: Does that fall under the same
21 one-year requirement?

22 MS. FOSTER: Mm-hmm, yes.

23 MR. SMITH: Judy, the \$6 1/2 million, how
24 far does that go back? Or is that just current within 365
25 days?

1 MS. NAVARRETE: We tried to run that from
2 the inception of the program.

3 MR. GILL: It doesn't include the work done.

4 MS. NAVARRETE: No.

5 MR. CARDON: Mr. Chairman, Theresa raises an
6 interesting and a good point. However, fair is fair. And
7 that was the original intent of the legislation, and I --
8 the board probably does not have the expertise right at
9 this moment, right at this time, to craft a motion that
10 will deal with every specific point. So, perhaps, the
11 motion could include --

12 MR. GILL: The general ideas.

13 MR. CARDON: -- the general idea that we
14 would want to have that pursued. I don't think it's our
15 obligation to completely flesh out the statute here at
16 this time.

17 MS. HUDDLESTON: Mr. Chairman, I agree. I
18 think if the board and DEQ come to agreement on how this
19 should be handled, then legislative counsel can put it in
20 the appropriate legislative form.

21 MR. SNYDER: Phil Snyder. Keep in mind,
22 just follow along with what Theresa said, that there are
23 applications. You are not going to know the costs because
24 people never submitted them because they were volunteers.
25 They knew they wouldn't get reimbursed. That

1 6 1/2 million is small. It is probably higher than that.

2 MR. BECK: We've actually had several
3 discussions on this particular issue because we knew it
4 was going to be a larger amount. We thought -- didn't
5 know it was going to be 6 million. What we thought the
6 UST volunteer would have to do is submit the SAF
7 application for cost recovery and just have it go through
8 the same ranking or whatever for payment. Otherwise, the
9 money that would come in as a lump sum for payment would
10 devastate current goings-on for a substantial period of
11 time, three, four, six months. It would be easier to have
12 it go back through the ranking line and get in line with
13 everybody else.

14 CHAIRMAN O'HARA: Any other comments, board
15 members?

16 I'm going to craft a motion. Give me one
17 second, see if I'm capturing this. UST Policy Commission
18 recommends that the legislature amend the statute --

19 MS. NAVARRETE: It would certainly increase
20 the amount of applications submitted.

21 CHAIRMAN O'HARA: I'm sorry?

22 MS. NAVARRETE: Once -- if this did go
23 through, the amount of applications submitted would go up
24 substantially.

25 CHAIRMAN O'HARA: Number of applications

1 submitted?

2 MR. ROCHA: For reimbursement.

3 CHAIRMAN O'HARA: I'm sorry. Because they
4 would then come back and --

5 MS. HUDDLESTON: There is no limitation on
6 the number of applications. You can do each one and get
7 reimbursed \$1,000 each week.

8 CHAIRMAN O'HARA: I think that's a
9 problem -- that's a problem too. They have that same loop
10 hole. It is limited, I think, by the 10 percent co-pay.
11 We need to limit it. It needs to be limited the same way
12 owner-operators are limited. It is 10 percent of the
13 co-pay, so you couldn't just file \$1,000 claims every
14 week.

15 MS. NAVARRETE: I'm saying, you would have
16 to file an application for each one of those. So the
17 number of applications submitted to the SAF would almost
18 be --

19 MR. GILL: You couldn't do it as a
20 combination?

21 MR. BECK: You would submit different ones.

22 MR. GILL: One application that combines all
23 the applications that you were denied for?

24 MR. ROCHA: I think the point is it may
25 increase the number. That's all we're saying, but I think

1 the motion you are going forward with is appropriate.
2 We'll work with anybody.

3 MR. GILL: This is going to be next July, so
4 you'll have the backlog all done by then.

5 CHAIRMAN O'HARA: You could just go
6 reimburse all those denials you already have.

7 Let me try this and see if it works. Feel free
8 to jump in while I'm reading this. The UST Policy
9 Commission recommends that the legislature amend the
10 statutes to allow volunteers reimbursement of application
11 preparation costs and to treat volunteers on an equal
12 basis as owner-operators in all other respects. Is that
13 too broad? In all other SAF respects? And then allow --
14 this change should be retroactive to the extent possible.

15 MS. DAVIS: Second for purposes of
16 discussion.

17 MR. CARDON: Can we suggest to add the word
18 "clarify?"

19 CHAIRMAN O'HARA: "Clarify" because the
20 intent was already there is what you are saying.

21 MS. DAVIS: Mr. Chairman, I think Ms. Foster
22 makes a really good point about how it affects -- if this
23 motion is made, then how does it affect something else in
24 statute? And it is like every time something gets touched
25 somewhere in this program, it affects another part of the

1 program. And this is an issue and it is this Commission's
2 responsibility specifically to advise the director of the
3 agency and the Governor about the SAF. And I think this
4 is an appropriate issue to bump to your financial
5 subcommittee and ask staff to run numbers and go through
6 that and go through -- I think there is issues we haven't
7 even thought of sitting here of how that would affect it
8 if we went retroactive.

9 CHAIRMAN O'HARA: You mean on the
10 retroactive aspect?

11 MS. DAVIS: Yeah, I do. I don't think the
12 agency has any disagreement -- we don't have a substantive
13 issue with it. It is just, I think, people on this
14 Commission are going to want to know what the
15 ramifications of that -- We can play it out here, or you
16 can play it downtown at the legislature. I mean, I
17 haven't even begun to think through the ramifications of
18 this.

19 CHAIRMAN O'HARA: You feel fine with the
20 first half of that, except the second to last part about
21 retroactive?

22 MS. DAVIS: If we are looking at
23 6 1/2 million, that's big. That's a lot of money.

24 MR. BEAL: It is a lot of damage to people.
25 I think the original statute intended for the volunteers

1 to be 100 percent compensated for their actions as an
2 incentive to go ahead and clean it up. And they have been
3 denied this co-pay, and the purpose of this is to make
4 reparations for that and make it right and to go forward
5 with it as the bill was intended.

6 And, therefore, I don't think -- Yes, it's going
7 to impact -- I think it should impact what's happened in
8 the past. If, in fact, we have \$6 million that we owe
9 people volunteers, that came forward, said, Sure, let's go
10 ahead and clean up this site even though I'm not
11 responsible, we need to stand there and pay them off.

12 I guess I'm kind of blown away by the amount of
13 money. It makes me kind of question is there a misuse of
14 this at some point? That does come into my mind. I still
15 think it is fair to stand the correct position, that being
16 that it was intended that they not pay. And we should fix
17 it so that they have it paid.

18 We shouldn't come along today and say all you
19 people that volunteered before today are just out of luck.
20 That's not right. I'm not comfortable with that. I think
21 it is unfortunate that the Department can't interpret this
22 to pay that volunteer application cost without going
23 through the entire scenario again. But if we are going to
24 do it and that's what the intent was, then that's what we
25 should do.

1 CHAIRMAN O'HARA: To address both his point
2 and yours, the language -- the language I was proposing
3 says, "This change should be made retroactive to the
4 extent practical" so that would leave it up to others,
5 like Tamara said, writing rules and considering those
6 issues on retroactivity and how it affects other rules to
7 make that call. I think the intent -- whether or not it
8 costs a lot of money, I agree with Roger. If it is right,
9 it should have been right back then. It is not fair to
10 benefit people who are now getting the rule changed versus
11 those --

12 MR. CARDON: Mr. Chairman, you are
13 suggesting adding the word "to the extent possible"?

14 CHAIRMAN O'HARA: "To the extent practical."
15 I said "practical."

16 MR. CARDON: We can't solve all the problems
17 from the beginning. I would like to move forward.

18 CHAIRMAN O'HARA: I said "to the extent
19 practical" just to be clear, should be made retroactive.
20 Leaves it up to those who make laws to consider those
21 issues.

22 MR. GILL: I think Shannon's thought was the
23 numbers are going to have to be compiled anyway, whether
24 it is the legislative committee or whoever that is
25 compiling them. They are going to -- It comes up every

1 time one of these changes comes in. It is always as,
2 What's this going to cost the fund to do it retroactive?
3 I agree with you. I believe it should be reimbursed, but
4 do we want to compile those numbers and look at it and
5 pass that on to the legislative when the time comes?

6 CHAIRMAN O'HARA: The question is would
7 there be a number presented that would change your mind on
8 retroactivity? Is there a number you can see where we
9 would say, Oh, it's too much, we won't want to do it? She
10 said 6 million.

11 MR. GILL: Or how about coming up with a
12 process for reimbursement, something like that, to pass on
13 based on the final numbers?

14 CHAIRMAN O'HARA: There is a process
15 established already, and that's the ranking system. I
16 don't think you can go around that.

17 MR. GILL: The people that file or didn't
18 file ten years ago, you've got Theresa's issue.

19 CHAIRMAN O'HARA: You have to rank them. Or
20 they would have to reapply. Based on the mechanics, they
21 may start all over; but they would get their money.

22 MR. GILL: How are the volunteers ranked,
23 though, because --

24 CHAIRMAN O'HARA: They are ranked just like
25 owner-operators, based on risk and financial need.

1 MR. GILL: It would be financial need now
2 because the site has no risk.

3 MS. FOSTER: So in other words, wait three
4 to four years and you will get your payment.

5 CHAIRMAN O'HARA: In Maricopa. They would
6 probably be happy over getting nothing.

7 MS. FOSTER: You might only have 30 percent
8 reapply. You might have 10 percent. You don't know.

9 MR. CARDON: That's a valid point as well.
10 Let's move forward.

11 MR. SNYDER: I suggest ADEQ survey these 120
12 volunteers to find out what they really did pay. I think
13 it's overstated. I don't think that that money was ever
14 paid out by the person.

15 CHAIRMAN O'HARA: Okay. I'll make a motion,
16 I guess, and just repeat it and make amendments. The UST
17 policy recommends that the legislature clarify the
18 statutes to allow volunteers reimbursement of application
19 preparation costs and to treat volunteers on an equal
20 basis as owner-operators in all other respects. This
21 change can be made retroactive to the extent practical.

22 MR. SMITH: I'll second it.

23 CHAIRMAN O'HARA: Any comments?

24 All those in favor say aye. Opposed say nay.

25 MS. HUDDLESTON: Nay. I vote no not because

1 I disagree with the equity but because I think there are
2 initial issues that we need to discuss and we haven't.

3 CHAIRMAN O'HARA: Any abstentions? Motion
4 passes. Thank you.

5 Let's move on to Item No. 6, discussion of ADEQ
6 sunset report, Sections 7 and 9.

7 MR. SMITH: Mr. Chairman, I would like to
8 move that to the January meeting. I haven't had time to
9 sit down and really work out the final things that I want
10 to see presented, but we are real close. So we will push
11 it off until January.

12 CHAIRMAN O'HARA: Table that one?

13 MR. SMITH: Yes, please.

14 CHAIRMAN O'HARA: Item 7, discussion to
15 forward October Policy Commission-approved recommendations
16 regarding technical subcommittee issues from the
17 September 8th, 2002, and September 17th, 2002 subcommittee
18 meetings.

19 I think this is the issue, and I'll defer to
20 you, Hal. We made recommendations in the October meeting.
21 I believe we made three regarding the subcommittee's
22 recommendations. They were approved. There was a small
23 issue on, I think, Item C that we -- about the format or
24 the reports. Did we get resolution on whether we wanted
25 to amend that and let it go forward? We talked about it

1 at the last meeting also.

2 MR. GILL: I guess my only point on -- was
3 that, I think, C as approved recommends the SAF section
4 provide -- must report to the UST Policy Commission.
5 That's the way it ended up, which they are basically
6 doing. I think the only -- the discussion in that meeting
7 where it was voted on was the original language said "in
8 the provided format." . And the AG didn't think that we
9 could request a provided format, which I didn't have any
10 problem with because in discussions with Bob and Judy,
11 they were already going to provide the data that was
12 mentioned to those.

13 So all I really was thinking about was adding to
14 that -- The issue was the information that was being
15 provided. We wanted to make sure there was an
16 understanding by everybody as to what we were actually
17 asking for because that's what all the problems were in
18 the past. We would ask for -- the Policy Commission would
19 ask for specific items to be submitted and were getting
20 what we believed was different information than we were
21 asking for. That was the whole point of the provided
22 format, was clarifying for everybody exactly what we were
23 asking for.

24 And I think from looking at the SAF submittals
25 for the last couple months, it keeps getting better with

1 better and better graphics. I don't know if there's a way
2 to meet Roger's request because he wanted to see -- Is
3 this meeting what you are asking for?

4 MR. BEAL: Sure, it shows trends. It's
5 fine.

6 MR. GILL: What do they call these?

7 MR. SMITH: Bar graph.

8 MR. GILL: Bar graph rather than a chart.

9 I just thought the way this is going in, it is
10 kind of a nonsense recommendation because they are already
11 doing that. So I would probably recommend removing it or
12 changing it to just say -- Well, I can't remember how I
13 worded it. I made some language changes before, and now I
14 can't remember. I think the point being is that the
15 issues brought forward by these were more of an issue then
16 than they are now. I have no problem moving these
17 forward.

18 I think I was talking to DEQ and Al was asking
19 me whatever happened to these. I didn't know. I knew we
20 voted. And the question before, once they have been voted
21 on, do they have to be submitted to all the different
22 people they are to be submitted to because these had not
23 gone forward, as far as I knew. That was the reason for
24 that bullet item on the agenda, was just what we wanted to
25 do because things are moving forward well with --

1 CHAIRMAN O'HARA: Do you feel it's not
2 necessary to send it on to all those --

3 MR. GILL: I am not sure. Do we have to
4 once it's been voted on and approved?

5 CHAIRMAN O'HARA: I think we have
6 flexibility. The issue came up. I spoke with Laurie
7 Woodall because the statute says we may make
8 recommendations to the director, Governor, speaker of the
9 House, and President of the Senate. And I was asking her,
10 can we send recommendations to either/or of those parties.
11 And she felt like the way it was worded, she said it was
12 conjunctive. It says "and." It seems like if you send
13 something to the director, you kind of need to send it to
14 all those parties in that part of the statute.

15 But there is other parts of the statute that
16 says we make policy decisions and that goes directly to
17 the director. I think we have flexibility when we vote
18 on recommendations whether we want to send it forward to
19 the party. We probably ought to clarify when we make that
20 vote what parties we want to send it to.

21 We can certainly go forward. Like you said, it
22 is almost -- everything is being accomplished without the
23 recommendation going forward. So I guess I'll leave it as
24 an open question. Do you want to send these forward to
25 the Governor and director?

1 MR. GILL: As I said, with the three agenda
2 items that were voted on and approved, the SAF is, indeed,
3 moving forward with these items, Number 1A being the
4 decision log. We're moving forward with that, making good
5 progress. As was evidenced today, we'll have discussions
6 next week -- in a couple weeks on that.

7 Problem B was the backlog, and we are moving
8 forward on that. I would say that the -- probably the
9 only reason for moving these forward would be that the new
10 director would see what's in place and what's being done.
11 But as far as -- I kept postponing the other issues that
12 were on the original recommendations because those -- we
13 were looking at those to see how things were moving, and
14 they were moving forward fairly well.

15 I believe the SAF is working hard to try to
16 resolve the issues that were brought forward. I'm not so
17 happy with what I'm being told from stakeholders with the
18 corrective action side of it because we don't really see
19 any progress at all on issues. As a matter of fact,
20 things appear to be getting more confusing. We were
21 hearing rumors of a review process that makes absolutely
22 no sense of trying to move things forward.

23 We haven't gotten to those recommendations. As
24 a matter of fact, we never did -- ultimately did not have
25 a meeting of the subcommittee to address the original

1 agenda items for the corrective actions. And I think we
2 probably need to do that to get things moving in that area
3 as well.

4 So we can discuss it with the Policy Commission
5 to see whether they want to move this forward. As I said,
6 I would probably recommend moving it forward just to the
7 new director so we can see what the Policy Commission has
8 accomplished and with a statement that the SAF is working
9 real hard in moving forward on these three items.

10 CHAIRMAN O'HARA: I'll get some language to
11 just put in the body of the letter that says something to
12 the effect we are seeing -- although we made these
13 recommendations, we see they are already being put into
14 effect.

15 Elijah.

16 MR. CARDON: Mr. Chairman, with respect to
17 who should receive recommendations, I would think that
18 everyone should receive that who has any interest and
19 specifically the director. I would like to say with the
20 new wind of cooperation and earnest effort that exists
21 between all parties involved in recent weeks, that I would
22 like to see the work of the technical subcommittee
23 accepted by this Commission and move forward for
24 informational purposes. There is no reason to bury it.
25 Why not vote to support it and let it be disseminated?

1 CHAIRMAN O'HARA: Any other comments on this
2 section? Members of the public?

3 MS. HUDDLESTON: I have a question.
4 Apparently, this was all discussed before I joined the
5 board, and I'm not certain exactly what we are talking
6 about.

7 CHAIRMAN O'HARA: I think the issue -- well,
8 the subcommittee's recommendations were really addressing
9 certain problems. And it was a comprehensive document,
10 probably five pages long, I think. We took on several of
11 those issues and discussed them as a Policy Commission.
12 Simultaneously, with a change in philosophy -- not change
13 in philosophy, there was some changes in ADEQ that
14 accepted some of the recommendations before we even had to
15 make recommendations to the director. We have already
16 accomplished that.

17 So I guess the issue is do we need to go forward
18 because the problems are no longer -- they are still
19 potential problems, but they are no longer problems. They
20 were already solved on an informal basis. Do we want to
21 go forward in the letter saying, Here are the problems,
22 here's what we recommend. It is almost like after the
23 fact. Who do we send those to? Do we send them to the
24 director or the Senate? That's my understanding of the
25 issue.

1 MS. HUDDLESTON: It seems to me, pursuant to
2 your statute, it says you may make specific
3 recommendations. You don't have to make those specific
4 recommendations to the director or to the speaker. You
5 may make them directly to DEQ at these meetings and not
6 pass them on to any of those people.

7 CHAIRMAN O'HARA: That was my thought, too.
8 And I think that's -- .

9 MS. HUDDLESTON: If they are being
10 handled --

11 CHAIRMAN O'HARA: That's what I'm saying.
12 If you send this in a letter saying, we've got problems,
13 we need to make changes --

14 MS. HUDDLESTON: That was my concern.

15 CHAIRMAN O'HARA: -- And we've already -- we
16 don't need that.

17 MS. HUDDLESTON: I was trying to think of a
18 diplomatic way of saying it.

19 CHAIRMAN O'HARA: I guess they're still
20 right. Do we need to make these recommendations? And if
21 so, as a matter of record, can we just send it to the
22 director since it is really an internal-type issue or do
23 we need to notify the legislature?

24 MS. HUDDLESTON: You have, in effect,
25 notified DEQ. You don't even have to send it to the

1 director.

2 CHAIRMAN O'HARA: I agree with you. I want
3 to get some other -- We have a record. It is in the
4 transcript. I have got a letter prepared to go to Rick
5 Tobin. Maybe change the name on it.

6 MR. GILL: As I said, I would reiterate that
7 I would like it at a minimum to go to the new director
8 with a letter saying that the SAF is working very hard to
9 address all the issues and we're making very good progress
10 because I think that, for instance, looking at 1B, the
11 director needs to be aware they need to be able -- I know
12 it is tough in this budget-crunch time, they need to be
13 able to hire technically qualified people for these
14 positions because that's created lots of problems. I
15 think that's what B points out. They need -- don't just
16 bypass SAF and UST when it comes to budgets. They do need
17 budgets to hire qualified people.

18 CHAIRMAN O'HARA: What I hear you saying is
19 move the recommendations forward with an acknowledgment in
20 the body of the letter that we are making progress on
21 the --

22 MR. CARDON: I don't think we need to wash
23 all this laundry in front of the legislature.

24 MR. BEAL: I would like to see the letters
25 go forward with the acknowledgment that great progress has

1 been made in response to it. These were areas that were
2 identified as being problematic, a great deal of work and
3 changes have been made. But I think they need to be
4 someplace other than buried in the minutes of these
5 meetings.

6 MS. DAVIS: Mr. Chairman, I agree it is a
7 constructive way to go forward.

8 CHAIRMAN O'HARA: Great. Any other
9 discussion? Brian.

10 MR. BECK: Brian Beck, again. We did work
11 hard on those and there has been some progress made with
12 my adjustment on those recommendations, not substantial
13 progress. And these things do need to be revisited
14 periodically. There is a lot of key important things that
15 are still not being addressed that are slowly being worked
16 on. We need to have those reminders. I would like to see
17 them come up at least every six months to see where we
18 stand on these things at the very minimum.

19 CHAIRMAN O'HARA: Any other comments,
20 members of the public?

21 MS. DAVIS: Mr. Chairman, I'm going to make
22 one maybe out of context. I was remiss at the beginning
23 of the meeting not announcing that the agency has a new
24 director announced yesterday by Governor Napolitano. Our
25 new director will be Steve Owens. I don't remember the

1 name of his law firm. I know he used to be a partner with
2 Brown & Bain.

3 MS. HUDDLESTON: Beshears, Muchmore &
4 Wallwork.

5 MS. DAVIS: The newspaper listed him as an
6 environmental lawyer. I have known Steve for some years.
7 He was also staff to a senator, worked Capitol Hill. He
8 has been out in Arizona for a long time. He's -- my
9 experience, he is a very bright man. He is also very
10 approachable, and he is good to work with. That's just my
11 personal opinion. I just wanted to let you know. I am
12 not sure of the timing. The transition started yesterday
13 for us in the agency.

14 But I'm assuming, Bob, you might know if he
15 would come in after the Governor is sworn in. Is that how
16 that officially works?

17 MR. ROCHA: Yes. I believe now that the
18 announcement has been made, he can technically come in and
19 start working with the current personnel. But the
20 official start date is in January, January the 6th.

21 MS. HUDDLESTON: He can start a transition
22 period.

23 MR. ROCHA: Right, immediately.

24 MS. DAVIS: Sorry. I was remiss in not
25 announcing that earlier.

1 MR. GILL: That's kind of why I think it is
2 important that he receives a letter stating that there has
3 been a change and people are working very hard because I'm
4 sure he may hear lots of things. It is important that
5 there is something on the record that shows there is
6 people working hard and there is a lot better
7 communication with DEQ than in the past couple years.

8 CHAIRMAN O'HARA: Maybe our desire to see
9 the progress continue. Any other comments?

10 Moving on to Item No. 8, discussion of agenda
11 items for next month's UST Policy Commission meeting.

12 MR. SMITH: Mike.

13 CHAIRMAN O'HARA: Mr. Smith.

14 MR. SMITH: I would like to put on next
15 month's agenda the monies needed, the funding needed for
16 the inspection compliance unit of the UST group and that I
17 would ask Shannon and Ron for a meeting sometime between
18 now and the next Policy Commission meeting to see if we
19 can put this to bed and come up with a recommendation to
20 go to the legislature and find some permanent funding for
21 his group.

22 CHAIRMAN O'HARA: Would you like to see that
23 done in a subcommittee first, or you want it brought
24 straight to the Commission? It may involve looking
25 through volumes of data and a little time consuming.

1 MR. SMITH: Would that be financial or
2 technical?

3 CHAIRMAN O'HARA: Financial probably.

4 MR. SMITH: Let's -- I would still like to
5 have a premeeting with Shannon and Ron and then get it to
6 the financial subcommittee and then get it to the full
7 Commission.

8 CHAIRMAN O'HARA: You have already got Item
9 No. 6 coming back for next month, right?

10 MR. SMITH: Yes.

11 CHAIRMAN O'HARA: I think we'll probably
12 have our annual report hopefully by end of January. We
13 can distribute a draft of it and discuss it.

14 Mr. Cardon.

15 MR. CARDON: Perhaps we could put on the
16 agenda additional funding for the program and that could
17 be an item for the financial subcommittee as well; that
18 is, whether or not we are going to support the attempt for
19 an additional tax.

20 CHAIRMAN O'HARA: Is there a formal attempt?
21 Is there a bill or something?

22 MR. BEAL: Yes.

23 MR. SMITH: Yes.

24 MR. CARDON: And also review of the
25 financial subcommittee's work specifically with respect to

1 the 21 percent overhead.

2 CHAIRMAN O'HARA: Anything else? Next
3 meeting -- I am jumping ahead, but it is on January 22nd;
4 is that correct?

5 Any comments from members of the public on
6 agenda items? Actually, let's go ahead and give general
7 call to the public on any items.

8 MR. BECK: Mr. Chairman, Brian Beck again.
9 After talking to some of the people, I don't think the
10 volunteer program was established until '96 and actually
11 took effect in '97. So going back ten years, I think that
12 \$6 1/2 million is rather high.

13 Also, there is a different thing, too, in the
14 UST volunteer program, which all of you probably don't
15 know; but a UST volunteer is a person that owns a property
16 but never owned or operated the underground storage tanks.
17 That's how they qualify. They had to go through fairly
18 substantial documentation of that to prove that they had
19 no connection with the underground storage tanks and that
20 the underground storage tank did have a release and it
21 impacted soil or water requiring remediation. This is all
22 part of this whole scenario.

23 Whenever that property is sold, that existing
24 UST volunteer disappears. They no longer are qualified.
25 The new property owner has to go ahead and reapply, that

1 sort of thing. There is seven particular such occasions
2 on one particular property where they started off, sold
3 the property, had another volunteer, sold the property,
4 just went on and on and on. There is a lot more UST
5 volunteers out there than there are properties per se.

6 A lot of those people don't really care about
7 the cost recovery, as Phil was saying. And in the early
8 days and I have done it myself, where I didn't even think
9 about cost recovery, I ate those costs up until about '99
10 when I started putting them on the actual application so
11 we can get partial credit on the applications and things.
12 There has to be a demonstration of co-payment and all that
13 type of thing.

14 As far as UST volunteers, there are a lot more
15 out there than have actually put applications in simply
16 because of the property transfers and things. Since '96,
17 I can't see how \$6 1/2 million has been acquired in
18 co-pay -- or in costs for applications. That is more than
19 6500 applications. That's a hell of a lot of
20 applications. Especially in 2000, there was potentially
21 125 at least in the documentation that was submitted by
22 ADEQ.

23 Also, within the annual report by ADEQ, there is
24 supposed to be a listing in there of the number of UST
25 volunteers. Thinking back on the annual report, I don't

1 remember seeing that in the annual report that was
2 submitted by ADEQ to the legislature. Could that be
3 presented next time?

4 CHAIRMAN O'HARA: And that item is?

5 MR. BEAL: The volunteer program in general,
6 look at the amounts, look at issues that are coming up
7 that weren't anticipated, like seven changes of ownership
8 on the same site.

9 CHAIRMAN O'HARA: We are getting back to the
10 issue of dollars, \$6 million, right?

11 MR. BEAL: Justify that. I think we need to
12 discuss the volunteer program in actuality of how it's
13 working. Are things taking place that no one anticipated?

14 MS. NAVARRETE: Also, Roger, how about did
15 the volunteer actually incur the cost just like Brian
16 brought up. Most of them probably did not incur the cost.
17 Then how would legislation be written to --

18 CHAIRMAN O'HARA: They wouldn't be
19 reimbursable if they didn't incur the cost.

20 MR. BEAL: I think we need to look. I can't
21 imagine a LUST site selling seven times. I can't imagine
22 mine selling once. Some day I would like to have that
23 happen. These are things I just can't imagine people
24 having the foresight on to address, and maybe we need to,
25 to where you're not backing up time after time after time

1 on the applications. But it is something that I think is
2 responsible for us to look at and haven't even thought of
3 it before.

4 It is kind of crazy to think in terms of dollars
5 and cents in a program that never looked at dollars and
6 cents at its inception. That's why it's so difficult to
7 grasp here. I mean, \$6 million is a lot of money, so is a
8 billion. But we never worried about the billion. Why are
9 we worrying about 6 million? It is a new thought process.

10 CHAIRMAN O'HARA: Could you just revisit
11 that 6 million figure?

12 MS. NAVARRETE: I will.

13 CHAIRMAN O'HARA: Just confirm that.

14 MR. GILL: Until a couple years ago, the
15 application costs were, like, 300, and 400 for
16 application. It was only a couple years ago it went up to
17 600, 700, and now 890. I mean, it was much smaller in the
18 past.

19 MS. NAVARRETE: I do know that small
20 applications can be submitted, and sometimes they are
21 submitted every two months or three months on one site.
22 That adds up when you have a \$1,000 application fee and
23 you're submitting four or five applications a year. Adds
24 up the total amount of applications also.

25 I'll check that out. We'll run some better

1 numbers. I just wanted to have an idea of what this was
2 going to be, so I'll have our new database guy run me some
3 numbers on volunteers. We'll probably need to define that
4 maybe down, down, down, down, down.

5 CHAIRMAN O'HARA: Any other comments from
6 members of the public on any of the topics we've
7 discussed? Okay, great.

8 I have already announced it, but the next
9 meeting is January 22 at DEQ, Room 250. And this meeting
10 is adjourned. Thank you for being here.

11 (Whereupon, the proceedings adjourned at
12 11:20 o'clock a.m.)

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1 COUNTY OF MARICOPA)
) SS.

2 STATE OF ARIZONA)

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