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UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
April 30, 2003
9:15 a.m.

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UST POLICY COMMISSION

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

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THE MEETING OF THE UST POLICY COMMISSION held
on April 30, 2003, at 9:15 a.m., at 1616 West Adams,
Basement Auditorium, Phoenix, Arizona, in the presence
of:

Michael O'Hara, Chairman
Harold Gill, Vice Chairman
Roger Beal
Gail Clement
George Tsiolis
Theresa Foster
Andrea Martincic
Shannon Davis
Myron Smith

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ABSENT MEMBERS:
Leandra Lewis

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Phoenix, Arizona
April 30, 2003
9:15 a.m.

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P R O C E E D I N G S

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CHAIRMAN O'HARA: We're going to call the meeting to order. Welcome to the April meeting of the UST Policy Commission meeting. First order of business -- wow, this is different. First order of business will be a roll call, beginning on my left.

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MR. SMITH: Myron Smith.

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MS. FOSTER: Theresa Foster.

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MR. BEAL: Roger Beal.

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MS. HUDDLESTON: Tamara Huddleston.

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CHAIRMAN O'HARA: Michael O'Hara.

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MR. GILL: Hal Gill.

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MS. MARTINCIC: Andrea Martincic.

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CHAIRMAN O'HARA: Thank you. There should be another item here to approve the minutes, but since that's a vote, I'll probably postpone that.

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Let's move on to Item 1, ADEQ updates. 1(a) is the SAF monthly report, and I believe Judy Navarrete will have a presentation, short presentation.

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MS. NAVARRETE: Short presentation. All the members have your reports there, and we issued 142

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interim determinations last month and got in 45 new applications. So we're doing well in knocking down that backlog. And then the next page are the informal appeals that were filed in December, January and February, and like I said, next month is just a snapshot. We don't have a database to track time frames. This is just a snapshot of the appeals that were filed in those three months. And then there's a note up in the corner where it says 14 informal appeals for failure to make a determination.

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Then the next page are the formal appeals during that time frame, December, January and February, and we had eight that went formal for failure to make a determination, and then there's one more page where it shows where all the applications are in the SAF itself, broken them out into the different phases.

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Is there any questions on anything? Any of the reports?

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CHAIRMAN O'HARA: Real quick, Judy, based on your graph on the first page, did you guys project when you anticipate the backlog to be eliminated?

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MS. NAVARRETE: I have been trying not to anticipate that, because once I do that, everybody is going to expect it and say, "Oh, the backlog is going to be cleared up in this month or that month" or something,

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but we're making great strides. I think this is

2 unbelievably fast. I think everybody in my section is
3 working tremendously hard, and we're looking at, you
4 know, summer coming up and people taking vacations with
5 their kids and things like that. So I don't know if
6 we're going to be sustaining what we're -- exactly what
7 we're doing right now. It may fall just a little bit
8 over the summer months. So I want to plan on that, and I
9 don't want to predict that, you know, September or
10 October, because once you say that, it becomes -- it
11 becomes law.

12 CHAIRMAN O'HARA: It's a great trend.

13 MR. SMITH: Judy, I have a question on the
14 informal appeals. The green term determinations, 367.

15 MS. NAVARRETE: That's how many interim
16 determinations were made in those three months, but
17 there's really no correlation. There's not a great deal
18 of correlation between the number of determinations that
19 we got out and the number of appeals. I wish I could
20 make that correlation, but this is just a snapshot of
21 those three months.

22 MR. SMITH: So the technical informal
23 appeals cost, informal and technical and costs is part of
24 the 367?

25 MS. NAVARRETE: No, no. That's just a

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1 snapshot. That's how many -- I can't make that
2 correlation in the database, I'm sorry. But it does tell
3 you how many interim determinations we made during those
4 three months and how many appeals we had in those three
5 months, but it's just a snapshot, and I can't correlate
6 between the number.

7 MR. SMITH: And then on the formal appeals.

8 MS. NAVARRETE: It's the same thing.

9 MR. SMITH: But there's a zero. Was there
10 supposed to be another line at the bottom of the box?

11 MS. NAVARRETE: That's me learning how to
12 use Powerpoint. We've changed over software, and so I
13 had to change over my graphs, and I haven't done the
14 front one yet. So new and exciting things may be coming
15 next month.

16 (Whereupon, Ms. Clement enters.)

17 MS. MARTINCIC: I have a question. Judy,
18 on the front page -- I apologize for maybe not
19 understanding this well -- but could you just explain
20 active applications and whether that number includes the
21 current received applications as well as backlog as of
22 that date? I guess, what is that?

23 MS. NAVARRETE: Total number of active
24 applications? That's everything we have in-house.

25 MS. MARTINCIC: Okay. So it would be

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1 current ones received as well as the backlog?

2 MS. NAVARRETE: Oh, yeah.

3 MS. MARTINCIC: Thank you.

4 MR. GILL: Do you know what it was last
5 month?

6 MS. NAVARRETE: 890 something. Sorry, Hal,

7 I didn't bring that with me. Just a little less than 900
8 last month, I think, and we're not going to come out
9 exactly even because I can't in this database.

10 CHAIRMAN O'HARA: Would you reflect in the
11 record that Gail Clement came in? Thanks.

12 Any other questions for Judy?

13 There's also, Judy, I think the very last page.

14 MS. NAVARRETE: I thought that was going to
15 be addressed later in the program.

16 CHAIRMAN O'HARA: I think that's on 1(a).
17 The last handout or the last page of that handout was the
18 SAFs most appealed issues and denials. Could you
19 describe that quickly?

20 MS. NAVARRETE: This is from the database
21 and spreadsheets that we keep of appeal issues, and I'd
22 like to let Tara speak on this, Tara Rosie.

23 MS. ROSIE: Thank you. We tried to run the
24 queries that we talked about at the last meeting, which
25 is having the database run the costing lines and costing

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1 line item numbers against appeals and denial codes, and
2 after running that several times, what we came up with is
3 basically a flat line. The most appealed item was
4 mileage. So it really didn't show us anything. What we
5 did is we took all of the appeal requests that we
6 received from November through February and went through
7 the letters and tried to summarize what the issues were
8 in each letter. We assigned those an issue code, if you
9 will, and tabled those up to come up with the most
10 frequent issues.

11 (Whereupon, Ms. Davis enters.)

12 MS. ROSIE: And that's the top part of this
13 that you see, the description of the top appeal issues.
14 The number one issue which was exponentially greater than
15 anything else was the direct pay activity and the cost
16 didn't match the preapprovals. Most of those were
17 resolved either on appeal -- or most of them were
18 resolved on appeal, and they resolved either with just a
19 waiver or an electronic reimbursement. I think the
20 recovery on that when you add those two together was like
21 90 percent. So it was way up there.

22 The next most frequent was project management,
23 and -- well, the cost ceiling and project management were
24 pretty close to about the same. What we ran into was is
25 problem that activities, task costs, we are either

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1 claimed using the wrong cost ceiling or no cost ceiling
2 when there was one, it was assigned, and so there was no
3 way to evaluate the cost ceiling and there wasn't
4 documentation or justification as to why the cost ceiling
5 wouldn't apply. During the appeal, most of those issues
6 were resolved as well and typically that was either
7 assigning the appropriate cost ceiling code or an
8 explanation, documentation or justification of why the
9 cost ceiling was inappropriate. Project management was
10 about the same thing. Anything with the 2000 and more
11 recent cost ceilings, the project management is included,

12 and what we ran into is project management claimed
13 separately on the worksheets without an explanation of
14 what it was associated with or why it wouldn't be
15 included. And then it dropped off dramatically in
16 frequency.

17 And the next most frequent issues were the
18 invoice detail. A lot of those are with the older
19 invoices, where they're lump sums and nobody had a
20 breakdown of costs, and on appeal, typically what happens
21 is whoever is preparing the application or the applicant
22 goes back and provides that detail and that can be
23 resolved.

24 The other thing was documentation wasn't
25 provided, and there wasn't a report of work on file that

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1 could be identified to document the work that was done.
2 Typically, again, recovery on those on appeal seemed
3 pretty good as long as that information was provided on
4 appeal or identified in the file.

5 The next -- the bottom part of that page is
6 just the top denial codes, and those aren't necessarily
7 denials that were appealed. It's just the most frequent
8 usage of the codes. We estimated these based on
9 applications as opposed to line items, because as you can
10 imagine with larger applications that have hundreds of
11 line items, if there's one reason for denial, that blows
12 any evaluation you're going to have.

13 CHAIRMAN O'HARA: Any questions?

14 MS. MARTINCIC: Just looking at this, it
15 sort of -- it appears that the top denial codes all sort
16 of have to do with communication and someone not
17 supplying the proper information and all of that. And,
18 again, we've talked about this a lot, and it seems like
19 maybe if there's a way to sort of, I guess, communicate
20 better with applicants to prevent it from going to the
21 appeal process and clearing that stuff up early, might be
22 a way to decrease appeals in general. I don't know if
23 that's feasible.

24 MS. ROSIE: That's something that we're
25 working on, and what we've done is we've developed a

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1 setup right now where we're trying to accumulate
2 everybody's e-mail addresses and disburse that amongst
3 the people in SAF so that for easy -- what would seem
4 easy simple questions, they can just e-mail a request out
5 and get a response right away.

6 MS. MARTINCIC: The other thing I was going
7 to ask is: Do applicants then receive a list of these
8 codes with definitions so they know, sort of like as
9 they're filling out, you know, they can look and say,
10 "Oh, well, this falls into this category" to be able to
11 process their claim more effectively? I didn't know if
12 something like that -- you know, like with a one-pager or
13 something that has all the codes listed out and what they
14 mean.

15 MS. ROSIE: What we've tried to do is
16 get -- for the draft application -- there used to be a

17 list of common deficiencies that was in the older
18 applications that were assembled in the cross check, and
19 then when they get the determination letters, they got
20 the codes and a description, hopefully, that makes sense.

21 MS. MARTINCIC: It might be helpful to have
22 that up front and then that way someone knows how to --
23 you know, like if it's a certain task and you're not sure
24 where it falls in, if you have the code and how you
25 define the code, then I as an applicant can say, okay,

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1 well, that falls under this one and sort of maybe can
2 categorize it more properly.

3 MS. ROSIE: I think with the draft
4 application, that would probably take care of a lot of
5 it. I think that kind of communication we've got in
6 there, it's more of a checklist format, but because
7 it's -- so many issues are site specific and application
8 specific, that's real difficult to do ahead of time.

9 CHAIRMAN O'HARA: What's the timing on that
10 draft application?

11 MS. ROSIE: Well, right now we've been
12 processing claims. So we're working on it.

13 CHAIRMAN O'HARA: Okay. Hal.

14 MR. GILL: To go along the lines of what
15 Andrea was saying is that for the 12 or 14 years I've
16 been working in Arizona, I think still a number one
17 problem is communication, and I think basically this list
18 here exemplifies what we're talking about. This is what
19 we get when we get a denial, and for the most part, this
20 is either confusing or meaningless because it just
21 doesn't tell us what the problem is. So it either
22 automatically goes to denial or we're on the phone
23 hopefully being able to clarify it. What we need --
24 because Judy, the last several meetings it's asked over
25 and over again, we need rationale why we're doing things.

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1 We need to understand what these mean. I mean, when you
2 send us something, and many of these can be handled by --
3 that will be resolved by a new SAF rule, but in most
4 cases, we do not know what these mean, and the codes in
5 particular.

6 I mean, the code can be so vague or include so
7 much that what specifically that has to do with the item
8 that is being denied, we just don't know, and we -- and
9 when we call and ask on the phone, "What do you mean by
10 this," then you tell us and we say okay. Then we can
11 either resolve it or we think that it's this and this and
12 we may have to go to appeal, but we need some kind of
13 rationale along with these rather than just a code. I
14 mean, all the time we get -- like Number Five, this is
15 18-12-604(d), and we don't know what that is. We don't
16 know what you want as part of that or any of these. I
17 mean, that's what we see all the time. When this
18 comes -- I mean, Andrea just said it perfectly. She
19 doesn't know what this means. Well, there's a few
20 consultants that come to all these meetings, most of the
21 consultants don't. They don't know what these mean, and

22 it isn't clear enough as to how that's -- even though it
23 may make sense, it may not be clear how does that
24 specifically relate to what was denied here, and most of
25 the time they can't tell. We need to have some kind of

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1 rationale saying this is what we're asking for. This is
2 why it doesn't match whatever.

3 MS. ROSIE: So would it be clear to you,
4 Hal, if we said there's -- we typically use this kind of
5 stuff with the denial code that says there is no
6 documentation on file at ADEQ. When you read that across
7 the worksheet, you're reading it with the work that
8 you're claiming on the worksheet that you placed there to
9 say what it means, and typically when we use the 604(d)
10 denial code, there's an A.N. that's been sent out, a
11 notification to the applicant that's requesting a report
12 of work.

13 MR. GILL: Well, that would -- I just
14 picked that one as an example. On that one there, the
15 problem we're having with 605(d) now is the report of
16 work itself. Like you said, if there hasn't been a
17 report sent in yet, if it's in interim work, you've got
18 30-, \$40,000 or \$50,000 of work, but we're going to be
19 moving to a contingency phase or something like that.
20 The consultant or the owner/operator can't sit there and
21 wait until six, seven more months. And so it used to,
22 there was a process for turning in -- okay. Here's the
23 boring logs, here's the analytical data, here's a one- or
24 two-page rationale for what we did and why we did it and
25 then that would be report of work. We don't -- that's --

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1 we've had denials and we've tried doing that saying we
2 need reports.

3 MS. ROSIE: Many times -- the problems that
4 we're having, Hal, is that we get the boring logs, we get
5 a site plan, but we get no rationale or justification and
6 as soon as that's provided, there's no issue.

7 MR. GILL: What I'm asking for here is that
8 it needs to be decided what is needed in a case like
9 that. In other words, exactly you need. That's not
10 written down anywhere. It used to be it was accepted
11 three or four years ago. We'd send in the boring logs,
12 we'd send in the analytical data and whatever else was
13 required at that time and it was approved. Now, the same
14 things are not being approved. So we need to know what
15 do you want. What do you need if it isn't the full
16 report. That's just one example.

17 The first one, Number One: The direct pay
18 activity cost does not match preapproval. That one, as
19 you said, should be handled by 10-54(c). That comes up
20 again down here. I guess my question, rather than doing
21 it again, is why doesn't it handle it? I thought when
22 you gave your presentation months ago, that basically if
23 it -- let me read Number Four below: Activity is not set
24 forth in the preapproval but is within work objectives.
25 I thought that you had said that basically DEQ would call

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1 and tell you -- this one says just that, send it in as a
2 substitution waiver form rather than -- if we sent this,
3 it's already a denial. In other words, the only thing
4 you can do is appeal, but before we were saying if you
5 can call us and let us know this, which I got numerous
6 calls, but if we can get a call saying that this one
7 doesn't meet the work plan but it can be used as a
8 substitute waiver form, rather than just sending it out
9 as immediate. I mean, are we still calling to let people
10 know that or are we just sending out the denials?

11 MS. ROSIE: Many people are providing the
12 waivers up front. We try to call as much as we can, Hal.

13 MR. GILL: If this is Number Four on the
14 list, then obviously the communication isn't there.
15 We're not -- it either isn't being provided up front --
16 Barbara, I'm asking her -- it either isn't being provided
17 up front or we're not getting phone calls saying this can
18 be required. I mean, what is that? That's Number Four
19 on your list. And that as -- I mean, it's been, like --
20 I don't know how many months ago we heard the process and
21 we said, okay. That's fine. And as I said, I got a
22 number of phone calls, and we resolved it on the phone,
23 resolved it right away, but if it's still Number Four,
24 then everybody is not communicating.

25 But this is also another one that once we can

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1 ever get the SAF rule done, this is the kind of thing
2 that should take care of that because right now we're
3 using an antiquated rule and trying to fit it in with
4 statutes that have been put forth numerous times over and
5 over again since this was done, and they're just not
6 matching.

7 Item Two is the same thing, the cost ceilings
8 and the SAF rule are not matching. Basically, they just
9 don't reflect reality, and they never have. It's always
10 been impossible to try to fit. As you said, either there
11 was no cost ceiling or it was the wrong cost ceiling.
12 For a long time there was miscommunication. We thought,
13 well, we're supposed to take what we're doing and make it
14 fit into a cost ceiling, and I know most consultants were
15 doing that until we finally realized we're not supposed
16 to do that. You just do time and materials. Again, it's
17 communication and not -- and myself, I was doing that,
18 thinking, okay, well, this doesn't -- well, this isn't
19 exact but I'll try to make it fit and it was denied, and
20 we found out after the fact, well, that's because you
21 should have just done time and materials. A lot of
22 consultants didn't know you could do time and materials
23 when it said everything has to be done by cost ceilings.
24 That was a miscommunication.

25 Project management. That's an ongoing problem,

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1 and it should not be a problem with 2003, but we don't
2 know right now what does DEQ and SAF want for invoices,
3 what do they want for documentation once we turn this in
4 for the T and M. We need to know exactly how would you
5 like this provided; otherwise it's going to be a ration

6 of -- you're not going to understand what we're doing
7 because we don't know what you're asking for. We need
8 some kind of -- you know, something from SAF asking how
9 do you want this provided to you so we will understand
10 exactly what we're doing as T and M and it fits in
11 everything.

12 MS. ROSIE: You have done T and M before,
13 right?

14 MR. GILL: Years ago.

15 MS. ROSIE: Consultants have turned in time
16 and materials before. Wouldn't you turn in time and
17 materials just like you did before?

18 MR. GILL: Probably not because this was --
19 it was T and M at the very beginning of the program, SAF
20 program, and we spent hundreds, thousands of dollars
21 doing applications because it wasn't understood what we
22 were doing because it was the first time we had started
23 and everything was T and M, and we really spent a lot of
24 money doing an application, period, just trying to get
25 it, and then DEQ would come back saying, how much detail.

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1 And that's what I'm getting to, we need to know how much
2 detail you want for the T and M.

3 In other words, if you have an idea in your
4 head of how you would like it and we have an idea and
5 we're not thinking the same thing, obviously we've got a
6 bunch of appeals again. But the SAF rule will fix a lot
7 of it, but we've got to get it going.

8 On Number One, I've after -- after I get this
9 list and asked people about these items, I got a number
10 of calls from at least three consultants saying that the
11 people work plans are modified after they send them in
12 and they don't know what their modification is. They'll
13 get a, "We've approved this much of this," but they don't
14 know where the modification was. They'll go by the
15 budget, but then when they send the work in for
16 reimbursement, they did a particular activity under this
17 budget, but it's denied because it didn't meet the work
18 plan, and that's based on the detail that DEQ at that
19 point provides because I've asked for the detail myself
20 and DEQ said, "Okay. We're going to do this and this."
21 So the line items are being changed without being
22 notified.

23 MS. ROSIE: Well, Hal, if you've noticed, a
24 lot of consultants are getting more familiar with the new
25 preapprovals, any preapproval after 2000. We have

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1 worksheet that we can generate that facilitate tracking,
2 and those had on them exactly how we do our jobs with the
3 direct pays. They've got the task, the activity codes,
4 the number of units, the dollars, everything that we look
5 at in a worksheet that allows you to take one column and
6 one side what was in preapproval and what was approved
7 and have several columns to work with and what you're
8 claiming then in direct pay. And when you're out of
9 units or you're out of costs, then you have to use a
10 waiver.

11 MR. GILL: Is that sent out with the
12 approval?

13 MS. ROSIE: Right now, it's sent out upon
14 request and most people request it. The applicants -- I
15 don't know that it would be useful to send it without the
16 determination letters. That's something we can certainly
17 look into.

18 MR. GILL: Well, I know -- it seems to me
19 like it would be useful because the comments that I heard
20 is that there were changes made in the codes and in what
21 was approved, but if you just sent out -- and I've seen
22 the letters of we've approved this much and this much.

23 MS. ROSIE: They also have an attached
24 payment determination summary, though, the claims when
25 their worksheet is attached to those determination

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1 letters, and that has the line-by-line detail on what was
2 approved and comments and what was changed. And that's
3 in conjunction with that that describes what was approved
4 and what was denied.

5 MR. GILL: It doesn't necessarily tell you
6 the activity or the labor that was originally sent in and
7 what changes were made.

8 MS. ROSIE: Yes, it does. On the worksheet
9 it does. On the worksheet, it has the amount requested,
10 the amount approved, the amount denied in numbers of
11 units plus dollars.

12 MR. GILL: Let me ask for -- because I want
13 to hear what -- because I got this a long time ago, and I
14 had problems with it, but I heard from others saying they
15 don't understand the changes that are being made.

16 CHAIRMAN O'HARA: We'll get to public
17 comment, if there's no other comments on this.
18 Ms. Davis.

19 MS. DAVIS: Mr. Chairman, Judy, as an
20 agency, we're trying to make -- put our resources where
21 they best serve the backlog, and also what Andrea said,
22 communication is really important and we want to be able
23 to do that. With these appeal issues and denial codes
24 and some of the issues that Hal is raising, in the
25 universe of claims that we get, would you say that these

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1 appeals and the denial codes -- I mean, is everybody
2 struggling with understanding what we're doing as a small
3 group? The reason I'm asking that question is, is it
4 some point during the summer do we sit down and do we
5 offer a four-hour training? I mean, do we get together
6 and consult with consultants in the same room and allow
7 for this back and forth so that we can be more clear?

8 I'm trying -- I mean, I hear what Hal is
9 saying. I don't necessarily think this is a forum where
10 we go back and forth, back and forth, back and forth,
11 but -- and keeping in mind that reducing the backlog is
12 critical to the director. It's on his screen, he wants
13 that done and you're doing that, but I also know that Hal
14 is saying that his folks aren't understanding it. So I'm
15 wondering from your point of view, what can we provide as

16 an agency to help the communication? Is it training and
17 then go from there? Because even if we get a rule
18 writer, it's going to be a month of Sundays before that's
19 done. I mean, let's hope it's not a ten year RBCA
20 process. So what do you think about that?

21 MS. NAVARRETE: The thing is on all these
22 top appeal issues, A.N.'s have gone out, deficiency
23 letters, explaining what ADEQ is asking for, and then if
24 we don't get the information, that's when this denial
25 code goes on there, and there has been instances, and I'm
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1 not accusing anyone in this room, but there has been
2 instances where people say, "I'll catch it on appeal."
3 They simply do not want to go back and get the
4 information right then because they're busy doing
5 something else. So go ahead and make your determination
6 and we'll catch it on appeal. There's nothing that we
7 can do about that. If we don't receive the information,
8 we have to go ahead and deny it.

9 I know that the technical people, I know that
10 the cost people are calling the consultants as much as
11 possible trying to get the information within a couple of
12 days or asking them, "Can you get it to me in five days
13 so that" -- and telling them in detail what they need.
14 The thing is, if we wait over that five days and we don't
15 either deny it or send out an A.N. that gives the
16 applicant 30 days to turn in that information, then we
17 have no record of why we're messing around with this
18 application and just keeping it on someone's desk. So
19 when someone gives you a personal phone call and asks for
20 information, we have to have that provided within a
21 certain amount of days, three to five days, or we have to
22 issue an A.N on it or deny it.

23 So these are some of the reasons that I think
24 that we do explain these denial codes and the A.N.s or
25 deficiency letters that the applicant or the consultant
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1 should know -- should isn't a bad word -- there should
2 have been an explanation prior to the denial code, but to
3 answer the other part of your question as to having an
4 educational seminar, that sounds like it would be a great
5 idea to get all the technical and cost people together
6 and have a day with the consultants and for them to
7 furnish their issues, and we can tell them our issues and
8 maybe come to some understanding.

9 MS. DAVIS: Mr. Chairman, I just ask the
10 Chair, I just request you give that direction to staff to
11 set that up, have a training session with the cost
12 people, the technical people and the consultants.

13 CHAIRMAN O'HARA: Sure.

14 MS. CLEMENT: Mr. Chairman, I have a
15 question. Judy and Tara, do you always perform the
16 worksheet analysis for each review? I mean, is that
17 something you automatically do? Because that seems to
18 provide the further explanation that may be clearer to
19 the consultant community.

20 MS. ROSIE: For the direct pays?

21 MS. CLEMENT: Yeah.
22 MS. ROSIE: We had a problem with the
23 database and prior to 2000, we weren't able to generate
24 the worksheets the same way. After that point in time,
25 though, that's how we do our job. We just try to match

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1 it up.

2 MS. CLEMENT: And then that does not go
3 out, though, automatically unless it's requested? Am I
4 understanding that?

5 MS. ROSIE: That form, it's a working form
6 that we have. It's not typed in all pretty. It has
7 notes all over it. It's in the application file, and
8 upon request we have faxed it out to most of the
9 consultants that we have copies of it.

10 MS. CLEMENT: Would it be a problem to the
11 agency to send that out as an attachment with a draft or
12 some sort of statement on it that would give you greater
13 comfort but that would give the consulting community a
14 better understanding of what your concerns are?

15 MS. ROSIE: That's probably an idea.

16 MS. CLEMENT: And then I had one other
17 question. There was -- there appears to be an issue that
18 once you make a phone call, a verbal request, that you
19 feel you have a time frame of three to five days to get
20 that information back.

21 MS. NAVARRETE: Without sending out a
22 formal letter to stop the clock.

23 MS. CLEMENT: Is there a statutory or
24 regulatory clock that starts at that point? Is there any
25 impetus to your policy?

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1 MS. NAVARRETE: No. That's informal, and
2 if we send out the letter, then it stops the clock.
3 That's why we've been trying to have better communication
4 and allowing people just to fax us something in or give
5 us some -- bring the documentation down or whatever, but
6 if we want to go strictly by the statute, then we need to
7 send out a letter and stop the clock, which is time
8 consuming.

9 MS. CLEMENT: No. What I'm asking is when
10 you call somebody on the phone and you're giving them
11 three to five days to respond before you send that letter
12 out, is there anything that could say to you that it's
13 required to give them three to five days or you could
14 give them two weeks or you could give them anything? I
15 mean, what is the framework you're operating under?

16 MS. ROSIE: The time frames are set up by
17 statute for us to send out the applicant notification and
18 to make the determination.

19 MS. CLEMENT: So the three to five days
20 you're trying to fit into that framework?

21 MS. ROSIE: Correct.

22 MS. CLEMENT: Okay. But it wouldn't -- in
23 each case, I assume, it wouldn't automatically be a three
24 to five days because you're starting from a different
25 time frame?

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1 MS. ROSIE: Correct.

2 MS. CLEMENT: So what I'm questioning is,
3 isn't there some flexibility that you have so that you're
4 not stuck sending those notice letters out? Isn't there
5 some space in there depending on where you started the
6 process?

7 MS. ROSIE: If I might, one of the problems
8 that we run into in cost is we tried to make all the
9 phone calls and keep the applications. What we ran into
10 is that our one employee who does nothing but costs had
11 at one point 20-some applications piled up in her office
12 and it took her more time calling back each one of those
13 people to try to see where they were on getting a
14 response, and she was unable to keep processing new
15 claims because she was trying to keep up with what was
16 going on and the courtesy phone calls on the other
17 claims, and juggling that around just isn't effective.

18 MS. MARTINCIC: When you call and ask for
19 information, I mean, do you set a deadline for that
20 applicant? Do you say, "Look, if you send us the
21 corrected information by such and such a date, you'll be
22 fine. Otherwise, we're going to have to send a formal
23 letter and stop the clock." I think sometimes if you
24 call and ask for information, if you don't set a time
25 line or a date, people aren't as apt to maybe be as quick

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1 about getting information in as they ought to be. So do
2 you do that usually or does it just depend?

3 MS. ROSIE: It's just a broad spectrum.
4 The majority of the applicants and contacts, when we call
5 them -- cost is towards the end of the process -- we get
6 a turnaround of a couple of days, and typically it's the
7 same day if it's something that's easy for them to get to
8 us.

9 MS. CLEMENT: Well, it would be my
10 recommendation that you consider giving them a verbal
11 time frame. If they don't meet that, then rather than
12 recall them, you've had that communication, you can give
13 a log that you record your notes. Then you're not this
14 open-ended universe and then getting cross ways with
15 people.

16 CHAIRMAN O'HARA: Thank you. Would you let
17 the record reflect that Shannon Davis and George Tsiolis
18 are present.

19 Any other comments from members of the
20 Commission on SAF status?

21 MR. GILL: I just wanted to thank Shannon,
22 and I think that's a good idea because we've had training
23 or seminars, and we got a big document out of it, and it
24 worked well, and just looking through here, a number of
25 these -- I think it was like Number Five on the top list,

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1 and I understand that the codes probably reflect those,
2 too, the Number Two and Three, you know, are all
3 reflective of we don't -- it says not adequate. We need
4 in this training to maybe get a better understanding of

5 what adequate is and exactly what would be required to
6 meet with requirements. And so I think that the training
7 is a real good idea.

8 CHAIRMAN O'HARA: All right. Any other
9 question or comments from Commission members? Okay.
10 Before moving on, I did have two requests for public
11 comment on this issue.

12 Mr. Beck, Brian Beck.

13 MR. BECK: One that was provided there is
14 back in November we were talking about the UST volunteer
15 and the application fees that have actually been incurred
16 or potentially incurred into the SAF fund. It was
17 reported at that time that it was believed by ADEQ that
18 there was six and a half million dollars in those
19 particular fees. I received a call back saying that
20 wasn't correct, that the number is going to be refigured,
21 and I still haven't heard back reported to this Board by
22 the agency on what that dollar amount actually is on the
23 preparation fees.

24 CHAIRMAN O'HARA: Okay. Thank you for that
25 that clarification.

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1 Leon Vannais.

2 MR. VANNAIS: Mr. Chairman, I just want to
3 make a couple comments to the -- I'm working very closely
4 with these codes with the State Assurance Fund over the
5 years. I'm moderately familiar with some of the reasons
6 why these codes are so prevalent and why so many things
7 are being denied one way or the other on initial review
8 from the State Assurance Fund and the corrective action
9 section. I think the biggest problem is the
10 communication. A lot of times -- for example, Number
11 Three, top denial code, which is inadequate support
12 documentation to justify a cost of units claimed. That
13 is something that's being used a lot. However, it
14 doesn't mean anything by itself. We don't know
15 whether -- inadequate support documentation could mean
16 you don't have subcontractor invoices or the invoices are
17 set up the wrong way. There's no report of work or the
18 justification that you provided within that report of
19 work is inadequate to the department or the technical
20 reviewer.

21 I am aware that when Pejman Eshraghi took over
22 SAF, he kind of brought some of the technical reviewers
23 and had the reviews by these technical reviewers entered
24 into a WordPerfect document that was attached to the
25 claim that was used by the cost reviewers to assist in

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1 producing their determination letters. Those review
2 comments in WordPerfect are pretty detailed, and it would
3 be nice if the department would be able to attach to that
4 the determination letters so that when we receive these
5 denials, we know what's being denied and why so that we
6 can chose to respond in a manner of an appeal or we can
7 just recognize it, because this happened, we probably
8 shouldn't have claimed that and we're not going to
9 continue on to appeal. This is something that's already

10 readily available to the department. It would be really
11 nice to have that information at that time during the
12 determination.

13 We have received -- I have seen recently
14 preapproval work plans that we send in for budget, and
15 the technical reviewer that responds to that and we may
16 supply revised costs or we may not, but the technical
17 review process, sometimes they remove activities that
18 have been submitted for evaluation or they add their own
19 activities which they feel are necessary. So when we get
20 a determination and activities have been completely
21 removed from the determination, there's no way for us to
22 appeal that because there's no denial. In other words,
23 we submit this task. The task comes back in the
24 determination not as denied but as completely removed as
25 if we have never submitted it. This causes confusion for

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1 us on the back end when we try to submit our direct pays
2 because we don't know exactly what has been removed and
3 what has not been removed. This also causes a problem
4 because of the certification statement, which is the
5 owner/operator signing that they attest that everything
6 is true and accurate in their application is based on the
7 dollar amount that's submitted by their consultant at the
8 time. If during the technical review process that amount
9 is increased for some reason before the ADEQ can issue a
10 determination, they require us to submit a new
11 certification statement from the owner/operator
12 testifying that everything is accurate and true when they
13 have no idea what they're signing for. They don't -- it
14 puts us in a position of saying, "Well, we need you to
15 sign this. We don't know what it means. We don't know
16 what you're attesting to, but in order for you to get
17 your determination, you've got to be able to provide this
18 to the department." And that source of miscommunication
19 causes a lot of problems for us.

20 But I think back in 2000 Patricia Nowack and
21 SAF put together seminars about four to six hours long.
22 I think the consultant community and the owner/operators
23 would love to have another opportunity like that because
24 it is very important right now as we go into the 2003
25 cost ceilings. We want to be able to report as we're

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1 doing work the level of detail that SAF will need in the
2 future to support those costs rather than a year down the
3 line when we actually submit these costs trying to
4 backtrack and saying, "Okay. Well, we didn't report
5 every hour of every day at that time and now we don't
6 have sufficient documentation to support cost approval."
7 Thank you, Mr. Chairman.

8 CHAIRMAN O'HARA: Let's move on to Item B,
9 UST Corrective Action Workload Status. Report total
10 number of corrective action plans, site characterization
11 reports and work plans remaining at ADEQ that have not
12 had an initial determination and the total number that
13 have not been approved. Is Ian Bingham -- I don't see
14 him in the audience.

15 MR. McNEELY: Ian Bingham -- I'm Phil
16 McNeely, for the record. Ian Bingham is sick today.
17 We have two forms in the back. One is the UST
18 corrective action status form as of March 31st. The
19 other one is the UST corrective action appeals as of
20 March 31st. It's sort of self-explanatory, but if you
21 look, we have a number of active documents. We have 58
22 total documents, eight work plans, 27 closure requests,
23 17 characterization reports, six CAPs. And then you can
24 see the time frame. Five of those documents are over 120
25 days and 19 are greater than 365 days. So I think this

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1 is what you guys wanted. In the future, what I'd like to
2 also provide is a list of the pending documents so
3 then -- make that available to anybody, consultants and
4 to owner/operators. So if you have a report, you can
5 check the list and see if it's on our list. If it's not
6 on our list, you need to call us so that we can actually
7 dig that out of the file and review it.

8 And then the second page is the appeals. In
9 March, we received three informal appeals for site
10 characterization reports, and we have eight in progress
11 that were received before March, four work plans, two
12 closure requests and two SCRs. Formal appeals we had
13 none, no formal appeals were filed in March, but we have
14 two, one NCR and one CAP that's in process.

15 CHAIRMAN O'HARA: Ms. Davis.

16 MS. DAVIS: Mr. Chairman, I want to thank
17 Hal. He's been working with the agency to get LUST
18 numbers. I want to be really retentive about this
19 exercise and make sure that we match up LUST ID numbers
20 to all these things, and then Amanda Stone has been
21 helping me with that, and she's working with one other
22 customer in the program to get specific LUST numbers. So
23 I just want to cast out, and I'll be saying this for
24 meetings on down the line, is please get us any numbers
25 that you have or if anything hasn't been responded to. I

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1 think we've done a good job in corrective action tracking
2 things since last late fall. We have a miserable
3 database. Sometimes I think our database works against
4 us rather than for us, and it will -- we're going to take
5 that apart and rebuild it. But please, if you have
6 things missing in action or you don't know where they are
7 or you haven't heard from us, let us know. Leon, you
8 sent some in. Thank you. So we'll get numbers to match
9 all these up, and it will be a lot easier for folks to
10 identify whether theirs is on the list or off the list
11 and being tracked. So Hal, thanks again.

12 MR. GILL: Did I get my list to you before
13 or after this was done?

14 MS. DAVIS: Phil, do you know?

15 MR. McNEELY: I think it was before.

16 MS. DAVIS: We need to match those.

17 MR. GILL: It didn't appear to exactly
18 match. Now, the numbers on the right, they're not
19 supposed to be added to the Number Six for CAPs, let's

20 say, and six should be the total that's there?

21 MR. McNEELY: But one clarification, a lot
22 of the -- on the list you provided, some of those were
23 responded to and they're still in process of going back.
24 Once we respond, even if we deny it or ask for a
25 deficiency letter, it's been responded to. It's not part
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1 of the 58. There's some other CAPs out there that I
2 think we're waiting for a response from our response. So
3 that could be another -- I think we might be asking for
4 that. That might be another list of reports that we
5 responded to and asked for more information.

6 MR. GILL: Because I asked for -- when I
7 sent out my e-mail to the consultants, I asked for CAPs
8 that they had in that they had not received the initial
9 determination, and then just the number of CAPs that they
10 had total, including those that just had not been
11 approved yet.

12 MR. McNEELY: And this 58 is no
13 determination has been made. There probably is another
14 universe out there of sites that we've actually denied
15 and we're waiting for responses, and that's something
16 that I'd like to get those numbers together also.

17 CHAIRMAN O'HARA: Thank you. Any other
18 comment or questions for Phil? Thank you, Phil.

19 Moving on to Item 1(c), status of request for
20 analysis of the 21 percent administrative budget, and I
21 think Bob Rocha will make a brief presentation.

22 MR. ROCHA: Good morning. For the record,
23 my name is Bob Rocha, and we stand ready to discuss the
24 information provided in the rough draft, a cleaner draft,
25 for you in the committee so that when the subcommittee is
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1 called, we'll be ready to go.

2 CHAIRMAN O'HARA: Okay. Bob, did everybody
3 get a copy of this or just mine? I'll get copies.

4 MR. ROCHA: I've got copies of the report
5 for the committee.

6 CHAIRMAN O'HARA: Okay.

7 MR. ROCHA: You don't need to make copies.

8 CHAIRMAN O'HARA: This is a breakdown the
9 department provided, and what we'll do is schedule a
10 financial subcommittee meeting probably in the next
11 couple of weeks and hopefully everybody will have an
12 opportunity to review this, and if you have any
13 questions, be prepared to discuss it at that meeting.
14 And I'll have Hal -- probably early in May. Any comments
15 or questions about the timing of that or the purpose?
16 This is a review and breakdown of the 21 percent budget.

17 MS. MARTINCIC: Is that just -- can you
18 elaborate on that? It's the DEQ showing that 21 percent
19 how it's spread out through the program?

20 CHAIRMAN O'HARA: Yeah. There's
21 organizational charts. We had made a request, the
22 subcommittee made a request and specifically listed three
23 things that we wanted from the department, and in
24 response to that, it's the organization charts together

25 with how they're funded. Then it's a description of job
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1 descriptions and how they are related to the State
2 Assurance Fund, and then finally a complete budget and
3 breakdown together with what I believe objections of the
4 funding and what areas it goes into. It's quite
5 detailed. We'll get copies. You said you had copies,
6 Bob?

7 MR. ROCHA: Yes.

8 MS. CLEMENT: Mr. Chairman, how much
9 advance notice will we have of that subcommittee meeting?

10 CHAIRMAN O'HARA: How much would you like?
11 A week or so?

12 MS. CLEMENT: A week to two weeks is really
13 a good idea.

14 CHAIRMAN O'HARA: I'll get with Al today
15 and we'll check calendars and get something out probably
16 in the next day or so for a meeting in another two weeks.
17 Any preferences on dates?

18 MS. CLEMENT: No.

19 CHAIRMAN O'HARA: Okay. Any other comments
20 or questions on the administrative budget? Thank you,
21 Bob.

22 Item 1(d) is the status of the SAF rule writer.
23 I think it was a topic we discussed last week and the
24 department, from my understanding, would like to have a
25 rule writer. They're in the process of trying to get
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1 funding for one. Can we get a status on that?

2 MS. DAVIS: Mr. Chairman, I'll take that.
3 Just pretty much the same thing I said last time. Right
4 now, we're in a holding pattern in hiring until the
5 budget is reconciled, and then we'll go --

6 CHAIRMAN O'HARA: I know that based on our
7 last discussion and discussion with the stakeholders,
8 it's a very important topic. The issue of getting a new
9 SAF rules package out there and obviously that can't
10 happen until we get an SAF rule writer. Do you think it
11 would be helpful if this commission made a recommendation
12 to either the director or whomever that we feel it's
13 important enough that we want to have a rule writer and
14 we want to have the rules moved forward and prioritized?
15 Would that be helpful to the process.

16 MS. DAVIS: Mr. Chairman, I think a letter
17 to the director is a good idea.

18 CHAIRMAN O'HARA: Great. Can we get a
19 motion, assuming that it's important to everyone here.

20 MR. TSIOLIS: I move that we send a letter
21 to the director on that point.

22 CHAIRMAN O'HARA: Great. Do we have a
23 second?

24 MR. BEAL: Second.

25 CHAIRMAN O'HARA: All those in favor of
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1 recommending that we have a rule writer, please say aye.
2 All those opposed? Motion passes. Thank you.

3 Moving on to Item 1(e), status of SAF payments

4 to insurance companies. I put this on the agenda. I
5 know this is a topic that the commission expressed some
6 interest in discussing at length. However, we were kind
7 of filled up by the formal hearing that was in place and
8 prevented both the AG D and I believe DEQ from speaking
9 at length on this topic. I just really wanted to get a
10 status of that process, how is the hearing going or has
11 gone, has the director issued a determination and if so
12 can we begin discussions on the policy itself. Does
13 anybody have a status? Are you familiar with that?

14 MS. NAVARRETE: I'm familiar with it. I
15 just don't know what you're asking me.

16 CHAIRMAN O'HARA: Well, there was a policy
17 bulletin, I believe, that came out two months ago that
18 said that the SAF would not make payments to insurance
19 companies, and the Commission members felt we wanted to
20 discuss that policy and possibly make a recommendation on
21 that policy. However, both the AG's office and ADEQ
22 personnel were precluded from discussing that at length
23 due to an ongoing hearing. So we agreed as a Commission
24 to wait until that was decided until we could take it up
25 and have a fruitful conversation.

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1 MS. NAVARRETE: You're calling that a
2 policy and it's not a policy. It's just a point of law,
3 I believe. It would not be a policy.

4 CHAIRMAN O'HARA: Okay. Correct.

5 MS. NAVARRETE: The statute --

6 CHAIRMAN O'HARA: The Commission would like
7 to discuss the law and legislation and possibly make a
8 recommendation to the legislature, and in order to do
9 that, we'd like to get the pros and cons and have the
10 department and the AG involved in the discussions. So is
11 that possible to do for the next meeting?

12 MS. PASHKOWSKI: Barbara Pashkowski,
13 Assistant Attorney General. The current status,
14 Mr. Chairman and Commission members, is that there was a
15 decision by the administrative law judge in that
16 particular case that upheld the law that insurance is
17 primary and State Assurance Funds are secondary. The
18 director issued a final decision in that matter this
19 week, it was either yesterday or last week, I can't
20 remember exactly when, upholding the administrative law
21 judge's decision. There is a possibility that the party
22 in that action will file a petition for review with the
23 director on that issue or that person or entity can
24 request a peer court review. So I'm not sure if the
25 litigation is completely over at this moment; however,

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1 there has been a final decision by the director upholding
2 the administrative law judge's decision.

3 CHAIRMAN O'HARA: Ms. Davis.

4 MS. DAVIS: Mr. Chairman, I think that, you
5 know, how we can move this issue forward is I think we
6 we're pretty close to being able to discuss just about
7 anything. I mean, the director has made his decision. I
8 think what would be helpful is if we could have a

9 discussion now and be very clear on what the Commission
10 wants to hear, what the Commission knows or what the
11 Commission's concerns are relative to the insurance issue
12 and we can go forward with that.

13 CHAIRMAN O'HARA: Great. Anybody have
14 comments on that issue?

15 MR. TSIOLIS: Mr. Chairman, I have just one
16 comment. It would be nice to see a copy of that
17 recommended decision, the final administrative law
18 decision.

19 CHAIRMAN O'HARA: And I know there were
20 questions earlier. I don't know if they have been looked
21 at in detail, but some questions that have arisen deal
22 with how does that law apply to those that had insurance
23 but they're not seeking payment. The law says you
24 wouldn't pay insurance companies, but if they double dip,
25 I guess the fund would not pay indirectly. However,

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1 self-insured, are they -- do they fall under this?
2 There's just some questions that needed clarity on.

3 MS. DAVIS: Could you be more clear about
4 the double dip part?

5 CHAIRMAN O'HARA: I think that may be clear
6 because my understanding is that it doesn't matter if the
7 fund is paying the insurance company or paying the
8 applicant, and then the applicant then seeks
9 reimbursement. In either case, the fund would not be --
10 my understanding is the fund would not have to pay that.
11 So it may not be an open issue, but really clarity on the
12 self-insured issue and if that will impact them at all.

13 MS. MARTINCIC: I'd like to know if the
14 department's thought about what impact this would have on
15 owner/operators current insurance policies and their
16 ability to get insurance in the future given this new
17 decision and what the department is going to request of
18 owner/operators to meet that need, I guess.

19 MS. CLEMENT: Mr. Chairman, my question
20 would be how does this affect the retroactivity of the
21 previous work that's been done and how payments have been
22 made and is there a cutoff date? Is there something
23 moving forward or does this affect all the applications
24 in the process? Is this going to be phased in? What is
25 going to happen with whether you call it a policy

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1 decision or legal decision. There's obviously a change
2 in the program.

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

5 MS. DAVIS: I want to make sure I captured
6 everybody. George, first of all, we're going to get a
7 copy of the decision to everybody on the board. How are
8 self-insured affected? The issue of double paying to the
9 insurance and the applicant. Andrea's question of what's
10 the impact on owner/operators that are currently insured
11 and the impact in the future to get insurance and then
12 also how do owner/operators meet the test of insurance.
13 Is that -- are these the three?

14 MS. MARTINCIC: Yes.
15 MS. DAVIS: And then Gail, is it
16 retroactive or will it be phased in. Basically, how will
17 it be implemented over time. Okay. Thank you.

18 CHAIRMAN O'HARA: Okay. I've got two
19 public comments. First, Mr. Kelley.

20 MR. KELLEY: Thank you, Mr. Chairman, Dan
21 Kelley. I put my speaker slip in to talk about several
22 things, and one, if I could just go back real quick and
23 give a comment on (b) and then on this issue, (e).

24 Mr. Chairman, Shannon, when I look at the
25 document that's been provided, the corrective action

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1 status as of 31 March, we don't have any confidence at
2 all in this data. The list that we forwarded from our
3 office to Hal had six CAPs in that list that are waiting
4 an initial determination, and so that -- if I go by this
5 database, there are no other CAPs -- there's nobody else
6 in the state submitting CAPs waiting for initial
7 determination. So I guess the point I want to make about
8 this is that this database is the department's
9 bookkeeping and accounting data. This is their business.
10 From a businessman, if I don't know how much money I have
11 in the bank and how much I owe, I can never run my
12 business. This is how much money you have in the bank
13 and this the how much you owe. This is your ledger right
14 here, and if your ledger is broken, how can you run your
15 business? I don't want to hammer you over the fact that
16 the data is screwed up. We all know the data is screwed
17 up. Obviously, we need to do something. That's the
18 first point about this.

19 The second point about this is, and
20 Mr. Chairman, Shannon, please understand that our concern
21 from the regulated community is not this nice display of
22 numbers. It's demonstrating to the department the time
23 that is lost in this infinite do loop of submitting
24 documents, getting some response from the department,
25 having to resubmit the document, getting some response

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1 from the department, resubmitting, some response,
2 resubmitting, it needs to come in, get one response, be
3 rereviewed and go out. And it's this infinite do loop
4 that consumes years to get a corrective action plan or
5 site characterization. That's what we're hoping this
6 data will show you is where you're being hung up in this
7 due loop. So that's our goal with this, please.

8 Then on Agenda Item 1(e), to add to your list,
9 Mr. Chairman, if you could add one thing to your list to
10 ask the department to present --

11 MR. TSIOLIS: May I interrupt for a second,
12 if I could just make a recommendation to Mr. Kelley.
13 Maybe you could revise that table as you would have it
14 done. That would be helpful for all of us.

15 MR. KELLEY: Mr. Chairman, George, this
16 Commission, before you sat on it, voted on a reporting
17 format for the department to use and recommended that
18 reporting format to the director. That report -- that

19 form was created and recommended to the director. So
20 with all due respect, I would throw it back into your
21 laps and ask you to reiterate to the director that he
22 report this data in the format that you've requested, and
23 it's very precise, that form. It addresses the issue I
24 just brought up about interim determinations, how many
25 don't have interim determinations.

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1 Okay. Agenda Item 1(e) about the insurance
2 co-pay issue. As an applicant and a consultant
3 representing applicants submitting these claims to the
4 agency, this is the issue we're running into right now
5 with the insurance problem. What will demonstrate proof
6 in the eyes of the department that my insurance company
7 will not cover these costs? Why is that a problem?
8 Because insurance company never give you letters saying
9 we don't cover this cost. They don't issue that letter.
10 Your request for coverage just disappears into a black
11 hole. That's how insurance companies operate. They
12 don't issue a letter saying no, and when they do issue
13 that letter, it's several months, if not years, after
14 your initial request for coverage, which what do I do as
15 an owner/operator in that year, year and a half while I'm
16 trying to hammer a letter out of the insurance company to
17 try to get them to admit that they won't cover these
18 costs.

19 CHAIRMAN O'HARA: Great. Thank you.
20 Mr. Pearce? John.

21 MR. PEARCE: Thank you. John Pearce. I
22 have two comments, and one was just a question regarding
23 the rule writer. I think it's really imperative that a
24 State Assurance Fund rule writer be appointed as soon as
25 possible. These rules are 11 years old. They're in just

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1 gross need of being updated. The status of the rules now
2 is creating disputes between parties and the department.
3 It's in everyone's best interest to get those rules
4 updated as soon as possible, and I'm not hearing that
5 there's any game plan in place within the department to
6 obtain an SAF rule writer in the near future. It sounds
7 like a letter is going to be written by the Policy
8 Commission to the director, but it seems to me that we
9 can do more than that.

10 Isn't it true that we have John Anspah still
11 working for the ADEQ?

12 MS. NAVARRETE: John works part time, has
13 always worked part time for SAF.

14 MR. PEARCE: John is extremely familiar
15 with the existing SAF rules and has been involved in a
16 number of occasions on legislation that relates to those
17 rules, and as time has gone on, even if he's working part
18 time, isn't he in conjunction with maybe somebody else in
19 the department able to lead the department along with the
20 stakeholders groups that would be engaged to rewrite
21 those rules?

22 MS. NAVARRETE: John could work with a rule
23 writer. George, would you like --

24 MR. TSIOLIS: Yeah. I know Bob. What I
25 did was I dug up the last version of the SAF draft rules
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1 that were published by Patricia in November of '99. I
2 couldn't find an electronic copy in our office or at the
3 DEQ so I had our night secretaries retype the whole draft
4 and sent an electronic version on WordPerfect to Bob
5 Rocha. I remember getting a request, I think it was -- I
6 forget from whom that John was also interested in a copy.
7 So I sent a copy to him as well, an electronic copy, and
8 I worked with John in addition to other people in putting
9 together that draft package, and I concur. The guy is
10 aces in terms of his knowledge of the SAF process, of the
11 legislative process, and he was involved in drafting that
12 rule package, and if you want to save some labor hours,
13 one way to approach it to be to pick up where that rule
14 package left off with as many of the people that were
15 involved in that rule package when they left off and John
16 would be the logical choice to be involved in that
17 process.

18 MR. PEARCE: I guess I'm just really
19 concerned that if we leave it to a letter to the
20 director, it may be some time before a response is
21 rendered, and it sounds like a problem in hiring somebody
22 new to fill the position because of the hiring freeze
23 within state government. So I can see us being here six
24 months from now and still not having an answer to this,
25 and I just would urge the department to look for other

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1 alternatives, including personnel.

2 CHAIRMAN O'HARA: Okay. Is that it?

3 MR. PEARCE: Rather than just let that hang
4 and then die, I'm wondering if there could be some action
5 plan that the department could look at to see if this is
6 not an alternative to devoting internal resources to
7 staffing this position.

8 CHAIRMAN O'HARA: If you feel like
9 answering now, that's fine. If you don't, you want to
10 come back with a response at the next meeting, that's
11 fine.

12 MR. PEARCE: Something like that.

13 CHAIRMAN O'HARA: Thanks. Does that end
14 your comments?

15 MR. PEARCE: No. I've got another comment.
16 Segue over the insurance issue. I'm receiving a lot of
17 phone calls in the last several weeks from a variety of
18 owner/operators and consultants, both. I think there's a
19 lot of rumors going around out there. I'm not sure how
20 many of them are true, how many of them are founded in
21 fact, but there's some pretty wild speculation going on
22 and some pretty wild reports that we're getting from
23 owner/operators about what's happening with their money
24 and the insurance issues. And I do say wild because some
25 of them are pretty amazing if they're in fact true.

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1 For example, I'm hearing that we're not just
2 talking about insurance payees. There's some discussion,

3 some feedback from the consultants and owner/operators
4 that those that have other means of financial
5 responsibility, not insurance policies, but other means
6 of financial responsibility in CFR are getting
7 correspondence from the department that we need to
8 exhaust that financial responsibility before accessing
9 the fund, at least to the first \$500,000 with coverage on
10 the claim.

11 One specific instance is sort of the captive
12 situation that one owner/operator set up to fund its
13 financial responsibility obligations. It's not an
14 insurance company funded. It's a captive that the
15 organization, a company that was put together to satisfy
16 their financial responsibility, and I'm hearing that
17 they're being told to exhaust the first hundred thousand
18 of their claim to make captive before they go into the
19 fund for the rest of their claim. If that's true,
20 there's obviously going to be a big dispute about that
21 because that gets us towards those that are truly
22 self-insured or insured through only some other means and
23 mechanism, and I didn't see that anywhere in the record
24 of the decision that was rendered about insurance fees.

25 But in addition, there's the comment that
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1 Mr. Kelley brought up, and this is a very big concern for
2 a number of those that satisfy a financial responsibility
3 through insurance. What does it take to show the
4 department that their claim should be processed because
5 they're not getting money from insurance companies? Is
6 the certification that they have not been paid by the
7 insurance company, and they will remit payment and
8 declare that payment should it come later on to the
9 department adequate? In other words, is the
10 certification saying I have not received money from the
11 insurance company, and if I do receive money from the
12 insurance company, I tell you right away if I've been
13 paid from the insurance company. Is that enough to
14 trigger eligibility of the claim and get that claim
15 processed or will it take something more, for example, a
16 letter from an insurance company that says you've been
17 denied coverage? And working with insurance companies is
18 a great deal. Dan Kelley is correct. I mean, insurance
19 companies don't like to issue those kinds of letters
20 because often there's a trigger for a lawsuit against the
21 insurance company. Normally what they do is they'll
22 respond and say we're looking at your claim. We need a
23 bunch of additional information. We're not going to
24 decide one way or the other, and that can continue for a
25 long, long time. So you can see the danger. The danger
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1 is that the claim will be held in limbo while one waits
2 for the final word from the insurance company that sits
3 in a tower in New York City and may not render that
4 determination, at least not for several years.

5 So I urge that the department get out in front
6 of this issue and decide how it's going to handle these
7 claims because I believe, as we sit here today, that this

8 is already happening based on comments from
9 owner/operators, and I do think that this ought to be
10 addressed right up front with this Policy Commission
11 because this is an issue that when the department begins
12 to implement these kinds of decisions about how much
13 information is enough to declare a claim eligible in this
14 insurance pay issue, that needs to be communicated to the
15 public, and I don't think that it is. I don't think that
16 it is. And I do think that this is exactly what the
17 Policy Commission is supposed to hear before the
18 department embarks on this course of action, and I've
19 cited it before, I'll cite it again, ARS 41-1001.20
20 defines policy statement to be anything, written
21 expression which informs the general public of the
22 agency's current approach to or opinion of requirements
23 of federal or state constitution, federal or state
24 statute, et cetera, and then of course there's 49-1093,
25 which is part of the statute that this Policy Commission

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1 acts under, which -- excuse me, 49-1092(d)(3), which says
2 that the Policy Commission should have 30 days to review
3 and make written recommendations to the director before
4 the department's adoption of standard policy or guidance
5 of the program and the rights of owners and operators.

6 I'll agree that the issue that was before the
7 administrative law judge and then the director about the
8 insurance pay issue was a legal issue, but the fallout
9 from that interpretation is clearly a policy statement
10 that the department needs to realize is exactly what
11 41-1020 designed to ensure that the department issue that
12 written statement of where it's going with that
13 interpretation and bring it to this Policy Commission's
14 attention so that we don't have this kind of confusion
15 with the regulated community. So I really urge that the
16 department take the time to gather its thoughts and
17 direct it where it's going on these issues and put it on
18 paper and advertise it to the public so that people don't
19 keep wondering what they have to do.

20 CHAIRMAN O'HARA: Thank you, John.

21 I'm going to call for a quick 10-minute break.
22 Be back at 10:35.

23 (Whereupon, a recess ensued at 10:26 a.m.)

24 CHAIRMAN O'HARA: I'm going to call this
25 back to order.

0055

1 Next item on the agenda is the technical
2 subcommittee update.

3 MR. KELLEY: Mr. Chairman, can I just make
4 one more comment on the previous item. I want to comment
5 on Agenda Item One.

6 CHAIRMAN O'HARA: I'd come back and address
7 it when you get a chance. I've already given you a
8 public comment on One. We're kind of pressed for time
9 today, by the way, too.

10 Go ahead, Hal.

11 MR. GILL: Okay. First off, I sent all the
12 Commission members copies of the last several months of

13 the meeting summaries from the technical subcommittee,
14 and as I said in that e-mail, I can send those to you
15 every time, if you would like them. Just let me know,
16 because to be honest, I had forgotten that I was -- I
17 forgot to send them out to everybody because I go over
18 the same information, but I can send out the summaries to
19 you if you'd like. And just -- because Al and I work
20 together and came up with a meeting summary of the
21 subcommittee, and I can just e-mail that to all of you
22 rather than kill a bunch of trees and make a number of
23 copies. You can bring it with you, if you want to go
24 over any issues or not.

25 The one thing -- 2(a), the first thing I wanted
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1 to do is the last meeting there were a number of
2 questions from Commission members, mostly new but some of
3 the existing members as well, asking about the issues
4 that were being discussed in the technical subcommittee,
5 and what I wanted to do is -- and I had forgotten that
6 the new members did not know what had come before, and I
7 kind of wanted to explain briefly why we were addressing
8 issues that we were addressing.

9 One of the last tasks that we were asked to
10 perform was to review the guidance document, and per the
11 agreement between DEQ and the Policy Commission, the
12 guidance document needed to be reviewed and approved
13 before the rule went forward so they would be in
14 conjunction with each other and the owner/operators and
15 the stakeholders would know how to -- the rule was going
16 to be implemented basically. So we were rushing, trying
17 to get the guidance document done, which is about this
18 thick, and when we came upon issues that were -- had --
19 obviously were going to require a lot of discussion and
20 there was a lot of ideas about how it should be done, we
21 put those on a parking lot to address at a later time so
22 we wouldn't hold up the guidance document and therefore
23 the rule. And that's where the parking lot issue came
24 from.

25 So when the guidance document was approved and
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1 when I put up -- brought the parking lot issues forward
2 to the technical subcommittee, we were basically just
3 continuing with review of the guidance document. So
4 that's basically where those issues came from. And then
5 as far as the implementation plan, 2(b), because we had
6 so many issues and issues based on the new bulletin that
7 was brought forth, new issues could very well be coming
8 on as well. We were -- I was trying to come up with some
9 kind of process to move the discussion forward so we
10 could get it to the Policy Commission for discussion and
11 a vote, if need be. And that's really where I was last
12 meeting is that was the purpose of those two, and what I
13 provided with you today is the original parking lot issue
14 or parking lot of issues list, and then last month I also
15 provided you the top five, and those are numbered on here
16 rather than give them back to you.

17 And I guess the question arose is that do we

18 need to bring the issues, and even more importantly, the
19 bulletin requests are coming to me. They're being faxed
20 to me, and I think Judy is still trying to get it set up
21 to where the form is on the DEQ's web page, and once they
22 decide they have an issue, they can actually fill it in
23 and punch the button and it goes directly to me. But do
24 we need to bring all of those issues, and if there is
25 anyone that doesn't remember or understand what the issue

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1 was as far as the bulletins, I can explain that to you.
2 You can just let me know because again, I don't remember
3 where we were in the process before the new people came
4 on board.

5 The issue now is we were moving forward in
6 discussions on the technical subcommittee based on the
7 request by the Policy Commission in the past, but if
8 there's questions now as to what we want discussed, as
9 far as the Policy Commission wants discussed in the
10 technical subcommittee, because it is a subcommittee of
11 the Policy Commission, then does the DEQ -- or does the
12 Policy Commission members want to look at all the parking
13 lot issues? Do they want to look at the bulletin issues
14 that come in and agree which ones are to be discussed and
15 therefore ask the technical subcommittee to discuss them?
16 And I put that forward because that was the -- basically
17 the gist of the discussion I got last time is that, and
18 justly so, the Policy Commission members were being left
19 out of what we were discussing because we were just
20 continuing on with the previous tasks. But I need to
21 open that up for discussion and see how we want to handle
22 that.

23 MS. CLEMENT: Mr. Chairman, Mr. Gill, Hal,
24 it's my understanding that in this technical
25 subcommittee, you prioritize the parking lot issues and

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1 the recent report by -- for the Policy Commission by ASU,
2 Dr. Johnson and his group.

3 MR. GILL: Yes.

4 MS. CLEMENT: So now is what you're saying
5 should we relook at all that and reprioritize or are you
6 suggesting that the Policy Commission support the
7 prioritization? I'm not clear where you want to go with
8 that.

9 MR. GILL: I'm sorry. I'm not being very
10 clear. There was some questions last time asking why we
11 were looking at specific issues. Why is the technical
12 subcommittee looking at all the minutiae and that kind of
13 thing, and I was trying to explain that that's why these
14 issues were being looked at by the technical subcommittee
15 is they were part of the initial guidance document, but
16 it also raises the question, is that from this point
17 forward -- remember, the Policy Commission is the one
18 that gives the mandate to the technical subcommittee to
19 look at things. And although I think the parking lot
20 issues from the guidance document fall under that because
21 that's what we were doing, I still need to bring it
22 forward to the Policy Commission. Do they want to look

23 at these and say, "Well, we truly do want to look at
24 those. Go ahead and look at them, technical
25 subcommittee." And the same thing with the bulletin,

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1 which is new. The bulletins are going to be coming to me
2 and they are issues that we ultimately as a Commission
3 will need to look at and approve whether or not they
4 ultimately will go on the bulletin, but the issues come
5 to me first and we need to decide which ones go forward.
6 That's what I'm asking is how do we want to handle that
7 in the future, keeping in mind that it also, because we
8 have monthly meetings, we'll put things another month
9 behind.

10 MS. MARTINCIC: I would just thank Hal for
11 sending out the summaries on the technical subcommittee
12 meetings. I find it helpful, and it looked like the last
13 meeting there were a lot of the Commission members
14 present, and I guess I would suggest since that was the
15 case, maybe what we should just do is approve the
16 prioritization of the parking lot issues and sort of move
17 along. It looks like -- I don't know that, you know,
18 everyone had the opportunity to be there and voice their
19 opinion about the issues. So I guess I would move that
20 we support the prioritization of the parking lot issues
21 that were determined at that meeting.

22 CHAIRMAN O'HARA: Any other discussion or
23 comment?

24 So you want to make a motion that the
25 Commission approve the prioritization of the technical

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1 subcommittee on these parking lot issues.

2 MS. MARTINCIC: Right.

3 CHAIRMAN O'HARA: Because this is part of
4 the guidance document, correct?

5 MR. GILL: Right.

6 CHAIRMAN O'HARA: It was already assigned
7 to the technical subcommittee?

8 MR. GILL: Yes.

9 CHAIRMAN O'HARA: Is that document still a
10 work in process?

11 MR. GILL: It's always a work in process.

12 CHAIRMAN O'HARA: So this is under -- we've
13 already assigned, really. So it's not a question of
14 whether it's --

15 MR. GILL: That's what I believe, but I
16 wanted to explain that.

17 CHAIRMAN O'HARA: So the motion is on the
18 table to approval the prioritization by the technical
19 subcommittee.

20 MS. CLEMENT: Second.

21 CHAIRMAN O'HARA: Any more discussion? All
22 those in favor of approving the technical subcommittee
23 prioritization all say aye. Opposed? Motion passed.

24 Go ahead, Hal.

25 MR. GILL: The next question is how do we

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1 handle the bulletin issues. We need to bring those --

2 because these, at this point, are like I said, they're
3 going to me, and then what I had put down in my
4 implementation plan is that we would meet with the people
5 that come to the technical subcommittee, and I was
6 overjoyed to see the number of Commission members that
7 were at the last two meetings. It really is helpful when
8 there's more members there.

9 But the way the implementation plan was set up
10 is that seeing how these issues, which were technical
11 issues, were coming to me and then I was bringing it
12 forward to the technical subcommittee, whoever happened
13 to be there, which was an issue, and then see where we
14 were going to put it in this process. But it is accurate
15 that it has not -- that these issues have not been looked
16 at by the Policy Commission, so the Policy Commission
17 hasn't said to look at these issues. Now, they did
18 approve of the concept of the bulletin, which was what it
19 was eventually called, and that was voted on and approved
20 so the process was voted on, the process of the bulletin
21 itself, not how -- not the implementation plan, but I
22 think that's something we need to discuss because it
23 was -- the point was accurate that we would be discussing
24 issues that were brought forth that had not been stamped
25 by the Policy Commission saying, "Discuss these issues."

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1 CHAIRMAN O'HARA: We did approve the
2 process, and the process stated that all those would go
3 to the technical subcommittee, right?

4 MR. GILL: That's true.

5 CHAIRMAN O'HARA: It seems to me that we've
6 already made that decision.

7 Is there any other discussion or comments?
8 Bulletin board issues come first to the technical
9 subcommittee and then recommendations are brought forth
10 to us. Is that process all right?

11 MR. BEAL: I think the point I would like
12 to put out is that if the bulletins are announced here,
13 perhaps, and the Policy Commission directs the technical
14 subcommittee to examine some bulletins or not, then when
15 we get a response back from the technical subcommittee,
16 we're prepared to take an action on that because we've
17 actually said this is something we're interested in
18 looking at. We also are forewarned and have an
19 opportunity to participate on particular issues. The
20 technical subcommittee meeting may not be convenient for
21 all of us to attend all of the time, just on the fact
22 that it's going to be held, but for particular issues,
23 you might want to be there on them. And it lets people
24 that don't attend the technical subcommittee meetings to
25 be prepared for what we expect that day to take place.

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1 That's more that -- it just gives us a firmer
2 position to be on and perhaps the Board better
3 understands what issues are coming forward. Otherwise,
4 depending on how many people attend the technical
5 subcommittee talking about a bulletin, you can have very
6 few people making a recommendation that we, placing our

7 faith in the technical subcommittee, may go along with
8 and it's not necessarily a majority.

9 MR. GILL: Mr. Chairman, it isn't as much
10 of a problem as it would have been in the past when there
11 was -- the meetings weren't already scheduled, because we
12 are -- we overlap as far as our meeting dates. In other
13 words, the technical subcommittee is in two weeks. So I
14 can present the bulletins that have come in since the
15 last meeting two weeks prior to one of the subcommittee
16 meetings and so that can be done. Then it would be up to
17 the responsibility of the people sending in the issues to
18 look at the dates of meetings, and if they want to make
19 sure that it gets on the next subcommittee, but then as I
20 said in the implementation plan, what I was trying to do
21 is that at the next subcommittee meeting after the Policy
22 Commission had seen and said okay, I'm going to take
23 these forward. Then we could present the issues and see
24 if they needed to be prioritized in the existing list of
25 prioritization, and I could ask the same thing at the

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1 Policy Commission, too, just to see if this -- if this is
2 so important that we need to put it up front or wherever
3 so we can make those decisions, and that's fine. I have
4 no problem with that.

5 CHAIRMAN O'HARA: So proposing the bulletin
6 board items are going to be announced here, then we'll
7 just delegate those to the subcommittee, if we so chose
8 versus you getting the requests and then --

9 MR. GILL: Well, I'll be getting them and
10 I'll just bring them here because whatever ones I've
11 gotten prior to this meeting, I will bring those and say
12 this is what we received, and see if anyone has any
13 issues with going forward.

14 MS. CLEMENT: Question, Hal, and
15 Mr. Chairman, the bulletin boards are published by DEQ,
16 right?

17 MR. GILL: They ultimately will be.

18 CHAIRMAN O'HARA: After it goes through the
19 process.

20 MS. CLEMENT: So when you're talking about
21 a bulletin board issue, it's not taking it from what they
22 published; it's an issue you want DEQ --

23 MR. GILL: Yes.

24 MS. CLEMENT: Now I'm clear.

25 CHAIRMAN O'HARA: I think what we want to

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1 avoid, though, as a Commission and subcommittee, is
2 somebody submits a request and it may not been an issue
3 that the Commission feels is important enough for our
4 time. So we don't want Hal spending time with something
5 that ultimately we want to vote on. So as long as I
6 think you come here first, you're fine.

7 MR. GILL: For example, I have four of
8 them. Does it have to be on the agenda each time to
9 present bulletin board issues? Do we need to put that on
10 the agenda?

11 CHAIRMAN O'HARA: From now on.

12 MR. GILL: Because I have four that came
13 through in the last month. I don't know if I can present
14 them.

15 MS. HUDDLESTON: We can put them on the
16 agenda for next time.

17 CHAIRMAN O'HARA: Okay.

18 MR. GILL: Well, wouldn't the agenda item
19 be to introduce bulletin issues rather than individual --

20 CHAIRMAN O'HARA: That's probably too broad
21 because if someone wanted to speak on a particular issue,
22 they wouldn't have any idea what that issue is by just
23 seeing bulletin board issue. It would need to be more
24 specific.

25 MR. GILL: All right. 2(c) was handled,

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1 and that's the original one that I brought last month.
2 2(d), just an update on that, which you've already seen,
3 but basically the DEQ said that they would be able to
4 make a decision and have a decision back by next meeting,
5 which is in two weeks. May 14th is the next meeting, and
6 they thought they'd be able to review the decision matrix
7 and have their comments by that time. So we can --
8 because what I told them is I wanted to bring it to the
9 Policy Commission at their next meeting, which is 5/28,
10 and so they promised that they would have it reviewed by
11 that time, and that gives them a month and a half from
12 the last time that they got it, and we did provide a
13 simpler matrix, much simpler to use.

14 And 2(e), again, just update. We met on the
15 groundwater study to start going through that, and the --
16 what came out of that was basically -- well, we decided
17 one thing that Myron was actually accurate on because we
18 had started going into it pretty deeply, we went through
19 the entire list of recommendations that ASU had provided
20 to make sure that there was an understanding by everybody
21 that was at the meeting what the issues were, and then
22 Myron pointed out when we started going through deciding
23 what needed to be done, that our response -- we're tasked
24 to look at the recommendations and come up with a
25 recommendation that's sent forward to the legislature

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1 that says that this particular item needs to be looked
2 at, but we're not supposed to go into it and resolve it,
3 which would take us a long time. But then also Myron
4 mentioned that we should look at what exactly what are
5 tasked to do, and so I got the session law that that was
6 in and it doesn't say anything. So we still don't know
7 what we're supposed to do, and I don't know, Myron, do
8 you remember if it was in the proposal that it spelled
9 out more exactly of what we're supposed to provide to the
10 legislature?

11 MR. SMITH: I don't think it was in the
12 proposal. The proposal just outlined the scope of work
13 for the bidders selected to perform the work. As my
14 memory recalls from the legislative sessions that we had
15 in passing this law, and anybody help me out there who
16 was there with me, and I'm sorry Ian is not here to help

17 me out, that the findings, if you will, of fact from the
18 report, there really weren't recommendations. They were
19 just facts that were to come out of the report for
20 questions that the legislature had of how contamination
21 is spread around the state, if there could be any broad
22 distinctions made for any certain areas that might need
23 more of a focus on remediation or attention, and I think
24 it was for us, the Policy Commission, to go through those
25 findings of fact and make any kind of recommendations to

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1 the director, the governor and the legislature to address
2 those issues that the report came up with. And I don't
3 know if it was ever written down or if it was just an
4 understanding that came out of all of the discussions and
5 the votes and the legislature, but I would defer until
6 the next technical meeting and the next Policy Commission
7 meeting when Ian is available and can help my memory.

8 MR. GILL: Because the session law just
9 says the scope of the study may include, and then it
10 lists four things, which are just general topics that the
11 study could include. It doesn't say anything about what
12 we're supposed to do. And to that end, because of that
13 and so that DEQ would have time to review the report and
14 come up with comments, the next meeting to start looking
15 at groundwater study recommendations to go to the
16 legislature, is going to be the June 11th subcommittee
17 meeting. So the 5/14 subcommittee meeting is basically
18 going to be back to the prioritized issues that we were
19 looking at earlier.

20 MS. CLEMENT: Mr. Chairman, Mr. Gill, a
21 couple things. Number one, could the committee or the
22 Commission have either the proposal or the contract
23 language that describes what ASU was supposed to
24 accomplish so we can compare what was provided versus
25 what was requested?

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1 And then secondly, I would recommend that the
2 Commission read the actual document rather than
3 recommendations, because the substantiating facts for
4 those recommendations, whether we agree with them or not,
5 will be in the report, and I really made a strong effort
6 to spend some considerable time on the report and the
7 recommendations and see if there is enough supporting
8 factually important information to support the
9 recommendations that have been presented, and in some
10 cases, it's questionable. So I think it's really
11 important to go back to the original requirements for the
12 report and the study and then look at the actual report
13 and not just read the recommendations because it's not
14 sufficient.

15 CHAIRMAN O'HARA: Any other comments or
16 questions?

17 MR. BEAL: I think it's important to
18 remember that there were supposed to be no
19 recommendations from the report, that it was in fact fact
20 finding. The recommendations are an observation made on
21 the report by the writer of the reporter.

22 CHAIRMAN O'HARA: Any other comments or
23 questions?

24 Thank you for the update, Hal.

25 I've got one request for public comment. I'm
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1 going to ask, Dan, if you can hold it until the end
2 because we're underneath an hour. Hopefully, there will
3 be time to get through all those.

4 Move on quickly to Item Three, discuss the ADEQ
5 staff training program per the UST Policy Commission
6 recommendation to director dated December 18th, 2002.

7 Hal, I think this was a subject you wanted to
8 discuss.

9 MR. GILL: I just asked at the last meeting
10 for DEQ's training program because we had recommended the
11 Policy Commission to send a recommendation to the
12 director with some possible suggestions on things they
13 could do for our training program. I'm just wondering
14 what the status of the program was and how they were
15 trained.

16 CHAIRMAN O'HARA: Does anybody have a
17 response? The recommendation we made to the director --
18 I don't think we've received a formal response to that.
19 Is there any update on staff training that DEQ would like
20 to discuss? Any specific questions?

21 MS. CLEMENT: I think the question that we
22 had last time was, Mr. Chairman, I'm sorry, was that what
23 is provided to either current or new UST program staff so
24 they know how to review either State Assurance Fund
25 documents or the corrective action documents and that you
0072

1 have a consistent and competent technical review,
2 including a consistent and competent financial review,
3 and we had asked to understand what you are providing to
4 the staff in terms of training or checklists.

5 CHAIRMAN O'HARA: Can we get an update on a
6 that at the next Policy Commission meeting, set an agenda
7 item for that.

8 Ms. Davis.

9 MS. DAVIS: Mr. Chairman, Gail, I want to
10 respond in part. One of the things -- I think there were
11 two pieces -- two pieces to the training, and when this
12 came up last fall, a lot of the training issues had come
13 up around we had this incredible backlog and it was
14 growing bigger than we were growing, and so what we've
15 done, as you know, I won't go through that, but what
16 we've done in the interim is to just really focus on the
17 backlog, getting the backlog down, and what we've done is
18 reallocate the resources for the interim period until we
19 get the backlog down and redeployed out of the corrective
20 action section to go.

21 And I think the second piece of that, which we
22 will report back to you on, is, you know, what will the
23 standard training be sort of once we get through this
24 phase, but we're focused right now on putting all the
25 resources into getting that backlog down, establishing a
0073

1 senior review team which consists of competent reviews
2 and we've done that in the meantime by assigning three of
3 our senior people, and I think that what is our standard
4 training program is a good legitimate request, and we'll
5 be doing that and just focusing everything on getting the
6 backlog done and being as consistent as we can for senior
7 people.

8 CHAIRMAN O'HARA: Thank you. Any other
9 comments?

10 MS. NAVARRETE: Well, in that letter, the
11 problem was identified as the backlog in the letter that
12 went to the director, and that's actually what we've been
13 focusing on, and like Shannon said, the waste programs
14 has given me three senior hydrologists to work with the
15 hydrologists that are reviewing the claims, and we are --
16 I think those people are going a tremendous job. The
17 cost people are doing a tremendous job, and everybody is
18 doing a tremendous job. We're turning out three to four
19 times as much work as previous, and I have given you in
20 the reports that you have received how our appeals
21 process is going. We are being -- we are doing three to
22 four times as much work and we are keeping the appeals
23 down.

24 I know it seems like a lot of appeals maybe for
25 some of the consultants, but according to all the

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1 information that I can gather, there have been periods of
2 times when these appeals have skyrocketed, and staff and
3 the SAF section right now is working as hard as they
4 can -- I can't speak for anyone else except SAF -- but
5 we're working as hard as we can to get the information
6 before it goes to appeal or certainly settle it on
7 informal appeal, and those graphs that I provided you, I
8 think, points that out, that we are succeeding. And the
9 number one problem that you wrote to the director, you're
10 seeing success. You may not -- and we will implement an
11 educational program or right now they are being educated.
12 They are learning, and we're sending them to as much
13 technical training as we can and address the backlog at
14 the same time. But these people are doing something
15 right because our appeal rate is not as high as any other
16 time in the history of this program. So I think we're
17 addressing this letter, and if you want more information
18 on what we're doing, I'll certainly provide that.

19 CHAIRMAN O'HARA: Okay. Thank you. Any
20 more question or comments?

21 MS. CLEMENT: I have another question,
22 Mr. Chairman. So what you're saying is basically the
23 training that people receive is peer training or upper
24 staff training on the job basically?

25 MS. NAVARRETE: No. We do have some
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1 technical -- Joe, do you want to speak to that. We do
2 have technical training classes, and they have attended
3 some technical training classes. I know. I see the
4 e-mails.

5 MR. DROSENDAHL: Joe Drosendahl from the

6 UST program. Yeah, recently -- occasionally there are
7 kind of like -- they have half-day seminars on new
8 technologies that have come out, and there was one
9 yesterday, and I think there was another one before that.
10 So there are some technical trainings going on besides
11 just kind of like peer-review training.

12 MS. CLEMENT: Thank you.

13 CHAIRMAN O'HARA: Any other comments or
14 questions on staff training?

15 Moving on to Item Four, the UST Policy
16 Commission annual report. This is the annual report for
17 2002, which we have not yet approved, and I did get
18 copies hopefully circulated to everyone and hopefully
19 everyone has had an opportunity to review those.

20 Any comments? Questions? Amendments?

21 MS. MARTINCIC: Should we just -- should we
22 send typo things to you or things --

23 CHAIRMAN O'HARA: Probably Al Johnson.

24 You've reviewed it. Anything substantive you
25 wanted to change.

0076

1 MS. MARTINCIC: Well, the other problem is
2 when I printed it up, none of the additional pages like
3 the backup. The budget didn't print up.

4 CHAIRMAN O'HARA: The appendices didn't
5 come out.

6 MR. JOHNSON: There might have been a
7 problem with the conversion to WordPerfect. I can get
8 you a hard copy of those, if you'd like.

9 MS. CLEMENT: Could we go over maybe what
10 we could print out versus what we can't, and then -- and
11 I think George had a comment.

12 MR. TSIOLIS: Actually, I couldn't open up
13 the package completely.

14 MR. JOHNSON: You wouldn't open it.

15 MR. TSIOLIS: Yeah.

16 MS. CLEMENT: I was able to print the
17 document itself, but the appendices were either cut off
18 or not available.

19 CHAIRMAN O'HARA: Same issue. Do you want
20 to try getting hard copies out?

21 MR. JOHNSON: I think that would be the
22 best thing.

23 CHAIRMAN O'HARA: Then we'll put it back
24 on. If there's any -- if you have any changes, be
25 prepared to bring those forward at the next meeting, and

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1 let's try to get that voted on and approved in May.

2 Any other comments or questions on the annual
3 report?

4 Thank you. Moving on to Item Number Five,
5 minor issue to some, phase out SAF eligibility. It's
6 clearly one of our mandates in the annual report, and
7 this Commission has looked at this issue and studied it
8 in depth several times and in fact there was a
9 recommendation that came out of our financial
10 subcommittee, I believe, two years ago, and the

11 recommendation was to set a date, and we didn't call it a
12 phase-out date. It's a little more accurate to say it's
13 an eligibility cutoff date where a day is set at which
14 any releases that are discovered after that date would
15 not be eligible for SAF funding. And it's a clear
16 distinction because some people thought phase-out meant
17 the phasing out the fund or phasing out the
18 penny-a-gallon tax, and that's not what we were
19 addressing.

20 But at any rate, we did make a recommendation,
21 and I forwarded that to all the committee members, and
22 for the benefit of the public, the recommendation was to
23 set a phase-out date, I believe, it was July 1st, 2002,
24 which was at that time approximately a year away. So we
25 must have made this recommendation back in 2001, and at

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1 that time, there were many issues, uncertainties dealing
2 with not only MTBE and maybe RBCA and some other things
3 that the Commission didn't feel it was comfortable enough
4 to go ahead and recommend a phase-out date. And they
5 also at the same time wanted to look at an actuarial
6 study which may give us a little more indication of how
7 the fund was going to either get in a more solvent
8 position or worse position over the course of time. And
9 so instead of recommending phase-out, the Commission
10 recommended we do an actuarial study, which we did.

11 The study determined that the fund, the
12 solvency of the fund or the insolvency of the fund, which
13 was at that time about 80 million, would slowly over time
14 improve until about 2013 where there would be no
15 insolvency. Basically, the fund would be on a
16 pay-as-you-go basis. And therefore, there really was no
17 impetus for phase-out or eligibility and it kind of just
18 got tabled. But there are other reasons, I believe, for
19 eligibility cutoff, and I think Theresa brought it up at
20 the last meeting and sent out a letter.

21 So I think it's probably time we either look at
22 this issue, make some recommendations or put it to bed
23 one way or the other. My recommendation is that we look
24 at this again, the subcommittee, financial subcommittee,
25 that we don't start all over but take what we've already

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1 done to date and try to bring forth a recommendation to
2 this full Commission. I'll open it up for discussion.

3 MS. FOSTER: Mr. Chairman, I was informed
4 that DEQ is forming a roundtable on this issue in early
5 September, and what I'm suggesting is maybe that we
6 combine our efforts with the roundtable to see what we
7 can do to phase out any new releases.

8 CHAIRMAN O'HARA: In September?

9 MS. FOSTER: I heard sometime this summer.

10 CHAIRMAN O'HARA: Do you know anything
11 about that? It will be on this issue specifically or
12 others?

13 MS. FOSTER: I heard it dealt with phasing
14 out, and we do have two documents in front of us that the
15 SAF program has put together. Maybe we might like to

16 hear what these numbers and tables represent.

17 CHAIRMAN O'HARA: Judy, would you like to
18 discuss that? I know you provided two documents to us in
19 your SAF update that dealt with a number of claims
20 received in, I believe, the last couple years or releases
21 that were incurred in the last couple of years.

22 MS. NAVARRETE: Right. The first one are
23 State Assurance Fund applications received on releases
24 reported after April 25, 2001, and this is what we have
25 in your inventory now. This is everything we have

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1 received on releases reported in the last two years. And
2 the second report that I gave you were unpaid SAF
3 applications filed for released reported since January 1,
4 1999.

5 The reason I reported on that was the tank --
6 they were supposed to have upgraded the tanks by December
7 1998. So from January 1, any release that was reported
8 from January 1, 1999 is a release after those tank
9 upgrades or supposedly you were supposed to have your
10 tank upgrades. So I gave you -- these are all the unpaid
11 applications and are in-house right now, although there's
12 probably been more applications since January 1 on
13 releases that happened since January 1, and I could get
14 you a report on that. This was just a sampling of some
15 things that we can provide you so that you could ask me
16 for reports that would be applicable to whatever your
17 discussions are.

18 CHAIRMAN O'HARA: So if I understand this
19 form, since April 25th, 2001, 18 releases total since
20 that date, new releases?

21 MS. NAVARRETE: With applications. There's
22 577 releases, actually, since January 1, 1999. 577 of
23 them that have not had applications on them.

24 CHAIRMAN O'HARA: Great. Thank you. Any
25 other questions for Judy on that? Theresa.

0081

1 MS. FOSTER: It would appear that for
2 owner/operators, whether self-insured or insured, that
3 they've only come -- in the last two years, they've only
4 come to the fund for \$100,000. So it would appear that
5 the need for owner and operators right now is
6 dramatically reduce so that maybe the fund is no longer
7 necessary to the same degree as before 2001. So it looks
8 like the program is becoming successful, and maybe the
9 fund for new releases is not as needed as it was years
10 ago.

11 MS. DAVIS: Mr. Chairman, Andrea, I'm
12 wondering if you could in a meeting get back to us on why
13 the number of claims from owner/operators have gone down
14 so dramatically. I mean, there's still releases out
15 there. Is it the assumption that Theresa Foster is
16 making, that there just isn't the need for it anymore.

17 MS. MARTINCIC: I can pull my membership
18 and see what I can find out. I would be concerned about
19 future regulations from the federal government as well.
20 I mean, there may be a need in the near future for

21 similar type things that it was instituted for in the
22 first place, because there's been federal legislation out
23 there talking about increasing UST regs again. So I
24 would just advise us to be aware of that and not make any
25 hasty decisions, but I will check into that, Shannon.

0082

1 MS. CLEMENT: Question, Mr. Chairman, and I
2 just don't understand, I think, what was said. Judy, 577
3 new releases since January 1999 that have not filed State
4 Assurance Fund applications; is that correct?

5 MS. NAVARRETE: Right.

6 MS. CLEMENT: So basically the universe on
7 that will, I assume, at some point unless they don't want
8 this money --

9 MS. NAVARRETE: Well, that includes
10 federal, that includes state, anybody that has asked for
11 a LUST number.

12 MS. CLEMENT: Okay. So there could be a
13 subset of that, but what would you suggest that the
14 subset would be that you think will eventually come in?

15 MS. NAVARRETE: I have not investigated
16 that. So I wouldn't want to venture a guess on that.

17 MS. CLEMENT: Is that possible for you to
18 pull that number out, because I think that's really the
19 universe of future claims that may be coming in.

20 MS. NAVARRETE: What would be
21 owner/operator?

22 MS. CLEMENT: Yeah. That would be nonstate
23 or nonfederal.

24 MS. NAVARRETE: Or ineligible for any other
25 reason.

0083

1 MS. MARTINCIC: If I can be checking into
2 this, is there a way for me to find out what those
3 numbers were, I guess, prior so I have a better -- so I
4 can explain the data showing -- DEQ's data showing that X
5 number of claims are made by owner/operators during this
6 time and now it's this? Is that on one of these pages?

7 MS. NAVARRETE: Yes. I think that's on the
8 second page, the number of applications.

9 MS. MARTINCIC: So basically you're talking
10 about it going from 50 to two.

11 MS. NAVARRETE: Yes, in the last two years.

12 MS. MARTINCIC: Is that what your data is
13 showing?

14 MS. NAVARRETE: Uh-huh. That doesn't mean
15 that we won't receive more applications on those releases
16 that have happened within the last four months.

17 CHAIRMAN O'HARA: Any other comments?
18 Questions?

19 I agree with your approach, Theresa, in that we
20 did something similar on the SAF rule package. The
21 subcommittee held its meetings simultaneous with the
22 stakeholders groups that were doing the rule package, and
23 that we were all on the same page. I just asked Shannon
24 if that's possible for us to do that or if they would be
25 welcome to us being in on that roundtable. I'll

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1 coordinate that with the department and get back with
2 you.

3 Any other comments? Questions?

4 Great. Moving on to Item Number Six, agenda
5 items for the May meeting. I received one specific
6 request for an analysis or discussion of the -- primarily
7 the DEUR process but I think also the RBCA process, and
8 I'll turn that over to Roger.

9 You wanted to discuss that a little bit, Roger.

10 MR. BEAL: Just a concern on what the DEUR
11 process means, where it came from and what the impact
12 might be on financial acceptability of it, if there's any
13 way to tell how it may be looked at.

14 CHAIRMAN O'HARA: From potential lenders?

15 MR. BEAL: From potential lenders, lender
16 source. Is it going to be workable? Are we putting -- a
17 property that's closed under RBCA, is it going to be a
18 saleable commodity or is it not going to be an option
19 that people want to take because of the DEUR process
20 being put on it, but I don't know. I think it's pretty
21 important because you may have a lot of people to close
22 out a lot of sites on the RBCA, which would end correctly
23 so. I mean, if it's a risk-based closure, then it's met.
24 You would have a property that doesn't become a hazard to
25 anybody in the future, yet you label it with a DEUR that

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1 may cause people not to choose that route in order to
2 have a salable commodity of property.

3 I don't know if we've ever looked at it. I
4 don't know what a DEUR process -- I no longer know how
5 the DEUR process was thought about. I can understand why
6 there would be a tendency to put a restriction on a
7 property, but I don't know what the impact of having that
8 done is, and I think that's the question.

9 CHAIRMAN O'HARA: Okay. Shannon is going
10 to have some information on that at our next meeting.

11 Any other comments or questions on either that
12 topic or other potential agenda items?

13 MR. TSIOLIS: As part of that,
14 Mr. Chairman, Shannon, maybe there could be a summary of
15 how many DEURs have been issued so far, how many DEURs
16 have been issued, if at all. Because having some real
17 data in front of us might actually help us to clarify our
18 thinking.

19 MS. FOSTER: Mr. Chairman, all the DEUR
20 information is currently available on the Internet. So
21 you can go in there and see exactly where the locations
22 are and that type of information.

23 CHAIRMAN O'HARA: Any other comment or
24 questions on this topic?

25 All right. Thank you. I'd like to now go to a

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1 call to the public. I'd first like to start with
2 Mr. Kelley since I skipped him twice.

3 MR. KELLEY: Thank you, Mr. Chairman. Two
4 quick comments. On Agenda Item 1(a), the SAF backlog.

5 As one of their most ardent critics, and as Barbara
6 testified, a process of upwards 300 claims against the
7 State Assurance Fund, I can vouch for Judy that the State
8 Assurance Fund is doing a great job. They are turning
9 the ship and moving away from the iceberg. The appeals
10 definitely have gone down, and the turnaround time has
11 greatly improved.

12 Second comment is just a little bit of
13 institutional knowledge for Shannon and Bob, who's gone,
14 Judy, Tara, there are two sets of draft SAF rules
15 floating around DEQ. Do you guys know that? One which
16 Mr. Seola drafted and then another one which was modified
17 after he left the agency. I've seen both of them. If
18 you stumble across the second one, I would suggest you
19 bypass it and go back to George's, but don't start down
20 the road without knowing that there are two draft rules.
21 You know what I'm talking about.

22 And then the final thing I had, Mr. Chairman,
23 was last month we had -- I had asked to have the issue of
24 DEQ's backlog or ownership volunteer determinations
25 discussed at this meeting. It's not on the agenda. I'd

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1 ask if you could please put it on the agenda for the May
2 meeting along with RBCA and the DEUR process. The
3 inability -- the department's inability to make timely
4 ownership determinations is stopping the process of the
5 SAF claims. That's the issue.

6 CHAIRMAN O'HARA: Did everybody have an
7 opportunity to read that memo that was passed out last
8 month on ownership notifications? Does the Commission
9 want to take that issue up and get a feel from the
10 members? We've got to take a vote or make a motion to
11 put that on the agenda.

12 MR. TSIOLIS: I think it's worth
13 discussing.

14 CHAIRMAN O'HARA: All those in favor of
15 discussing that at the next meeting say aye. All
16 opposed? Okay. We'll talk about it.

17 MR. KELLEY: Thank you, Mr. Chairman.

18 CHAIRMAN O'HARA: Thank you. I'd like to
19 ask Diane Barker, who has a comment.

20 MS. BARKER: Yes, Mr. Chair, may I approach
21 the desk?

22 CHAIRMAN O'HARA: Sure.

23 MS. BARKER: Good morning, my name is Diane
24 Barker. I'm a citizen, and I appreciate addressing you,
25 Chairman O'Hara, and committee. I'm here because as a

0088

1 citizen I support clean underground and the air above.
2 I'm not paid to come to you, but I feel that I would like
3 to help you, if I can, make sure that you do have the
4 funds to take care of this, and I have a little bit of
5 history.

6 I have been actually even directed by the ADEQ
7 to research a little bit at the legislature, and my
8 problem goes back to 1994 when the Maricopa mass transit
9 RPTA received \$6 million out of underground storage tank

10 fund. Now, some of you may know the story. I'd like to
11 just make some highlights. But I'm a supporter of mass
12 transit in general. I actually came down on the bus, but
13 I feel that mass transit is no good unless it has people
14 on it, and so until -- you know, to do a tradeoff to
15 clean up the air by buses for the underground, you know,
16 we should do this, but when the \$6 million was given, it
17 should have had a promise to pay back, and I submit to
18 you that you need to have some iron eyes over there and
19 arms so that the legislature doesn't get into your fund,
20 because the way this was set up, Representative Stephy
21 gave regional public transit the six million with the
22 idea that the Powerball would pay back, them fully
23 knowing the Powerball had not paid.

24 RPTA is an entity that receives all the cities
25 and have to put their lottery money in to be a part of

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1 this transit authority. So what happened, finally,
2 Powerball did pay, and it paid -- it was supposed to be
3 \$2 million, okay, that if it paid over two million that
4 RPTA would have to go back. So what happened is that
5 they knew then it wasn't paying over \$2 million, but in
6 1998, Powerball paid \$1.8 million; therefore, RPTA got to
7 keep the \$6 million and the \$1.8 million.

8 Now, if it was just happenstance, fine, but I
9 still think that it was poor. They have a -- they should
10 have a conscience to pay back, and maybe now there would
11 be a way for you to attach what is happening. There is a
12 House Bill 2292 that will go for the extension of the
13 freeway tax, but being the fact that we have paid
14 Maricopa County -- annually, we've received like about
15 250- to \$300 million. Most of that has gone for freeways
16 since 1985, RPTA receiving seven million out of it. This
17 new legislation is to extend the half cent sales tax and
18 to give RPTA really a direct check for 140 million out of
19 the State treasury.

20 Okay. So also in 1999, I figured -- I looked
21 on your sign-in list, and the gentleman who's also the
22 oversight for the freeway is Mr. Arnett, and he is the
23 man that was able in 1999, right around when this
24 Powerball paid off, to get federal funds -- they're
25 called surface transportation, STF funds, to make a match

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1 with House Bill 2365, which was local transportation
2 taking federal funds, five million annually and have that
3 extended out for five years. So that's ongoing too. It
4 would have been nice if Mr. Arnett would have stipulated
5 that they would have paid you back, in my opinion.

6 So having said all this, I just, number one,
7 would like to see you keep an iron watch over your fund
8 over at the legislature, and also see if -- what is this,
9 the recovery act, the federal recovery act that is really
10 the one that is the grandfather of the State Fund, and I
11 understand that you get -- there's a responsibility, you
12 know, on that that owner/operators can receive money and
13 third liability. I don't really understand this. These
14 are insurance things, but apparently they -- this

15 particular recovery act would be interested, obviously,
16 in seeing that our underground is being cleaned up, and
17 being the fact that federal funds went to support this
18 last go-around of an entity that took from you, RPTA,
19 then I would suggest that maybe they might not allow the
20 federal funds to be doing that again or they would --
21 somebody here, whether it's your administrator Mr. Rocha
22 or whatever, could contact them to see if in fact they
23 could get RPTA to pay you back.

24 CHAIRMAN O'HARA: Thank you. Is there
25 something in the form of a recommendation in the form of
0091

1 a request that Bob could do that, to make a request from
2 RPTA? Could Bob -- is he here -- maybe he can look into
3 it for us and give us an idea of what we can do as a
4 Commission to at least make a recommendation to get that
5 money back.

6 MS. BARKER: So somebody is going -- I
7 spoke with him, and he gave me his card. I'd be happy to
8 contact him, but it's your authority, isn't it?

9 CHAIRMAN O'HARA: I'll defer to Shannon,
10 but you'd be a good resource. That would be great.
11 We'll follow up on this at the next meeting. Thank you
12 very much.

13 MS. BARKER: You're welcome.

14 CHAIRMAN O'HARA: Comment from Jeff
15 Trembly. Did you want to make a public comment or just a
16 written comment?

17 MR. TREMBLY: Public comment.

18 CHAIRMAN O'HARA: Go ahead.

19 MR. TREMBLY: Jeff Trembly, for the record.
20 When the Commission looks at phasing out the SAF, I
21 believe they need to consider that there are a population
22 of underground storage tanks still out there that have
23 either never been registered and no one knows about or
24 are in temporary closed or not closed or not updated or
25 upgraded, and somehow, some way, we need to get those

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1 guys on board and get those things taken care of, whether
2 it's through a new grant -- new grant rules or new grant
3 program or some other means to get them taken care of
4 before the SAF eligibility is cut off, because most of
5 those tanks are in rural areas where people are actually
6 drinking the water and there's still a population of them
7 out there that you need to track down.

8 CHAIRMAN O'HARA: Thank you. Mr. Kimball,
9 David Kimball.

10 MR. KIMBALL: Yes. Members of the
11 Commission, my name is David Kimball. I'm with Gallagher
12 and Kennedy. And I guess I'm here to bring you up to
13 speed on a development that I would hope there would be
14 no objection to moving forward in. It's going to happen
15 because of the relation of the budget before your next
16 month's meeting or it may, depending on how things go at
17 the legislature.

18 I can tell you that the legislature has had
19 some interest in who is performing risk assessments, and

20 this came up in discussions that occurred several weeks
21 ago, and the question has been who from a budget
22 efficiency -- there ought to be a single agency that is
23 performing these risk assessments, and when I talk about
24 risk assessments, I'm talking about in the context of
25 developing site-specific risk-based cleanup standards for

0093

1 a facility, and that typically is done under our program
2 in default numbers and you can do a site-specific
3 standard, and it's the site-specific context that I'm
4 concerned about and have been concerned about and who
5 would be performing that function.

6 We have three programs that are of significance
7 in being able to develop site-characteristic standards.
8 They are, of course, the underground storage tank that
9 you deal with, as well as the voluntary program.

10 The legislature -- I was notified last night
11 that the legislature in the revised JLBC budget has
12 included a provision that would decide that DHS should in
13 fact be the agency to perform these, quote, risk
14 assessments and that it can be done by contract with DEQ
15 and that has been, frankly, the history. The issue came
16 up several weeks ago whether that was going to continue
17 to be the case, and there was some, I think, from what I
18 understand, miscommunication.

19 The reason I am bringing it up today is because
20 there was discussions at the work advisory board last
21 Friday in which this issue came up, and I believe a
22 resolution satisfactory to the stakeholders and WQARF
23 program and from those who have been involved in the
24 voluntary program with an agreed-upon responsibility. It
25 was important that I think you be aware of this

0094

1 understanding because if that can be documented, as has
2 been promised, by DHS and DEQ as quickly as we can, there
3 seems to be no need for the budget process to get
4 involved in these kind of technical decisions, and I
5 don't think it's in anybody's interests from an agency
6 perspective or even the private sector to have the
7 budgeting process get into these kind of details, if in
8 fact the primary government and private sector
9 stakeholders are in agreement.

10 That agreement is that the Department of Health
11 Services would continue to perform these review and
12 approval of these site-specific risk-based cleanup
13 standards that are being proposed for a facility or for a
14 site, for the WQARF program, for VRP and for Tier Three
15 of the underground storage tank program. Tier One and
16 Two, because it doesn't involve a lot of technical
17 evaluation, they're more of a formulated or default
18 number, that can be performed efficiently and effectively
19 by the Department of Environmental Quality. But outside
20 of the Tier One, Tier Two, essentially the Department of
21 Health Services would be the body that would essentially
22 review and approve these risk-based site-specific
23 standards, and then of course DEQ would have the
24 responsibility of going forward with the management of

25 the site activities to ensure that those standards are
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1 met.

2 Unless you have -- and I guess my point is, I
3 would like to know your thought on that. Hopefully, you
4 would be in agreement with the WQARF stakeholders, with
5 the VRP stakeholders, voluntary remediation program
6 stakeholders, that that would be an acceptable division
7 of responsibility over this key issue so that we could
8 tell the legislature that they do not need to proceed
9 forward with this language, that -- I don't care how well
10 you try to help them try to explain the problem, but they
11 never know exactly the right kind of words to avoid
12 problems. So I bring that to your attention. I hope you
13 would be able to get some guidance or direction regarding
14 that approach, and if so, then we would essentially have
15 consensus over this issue that we can go to the
16 legislature and tell them that they don't need to get
17 involved.

18 CHAIRMAN O'HARA: Did you say there was a
19 deadline or time frame?

20 MR. KIMBALL: I just got called, frankly,
21 last night. There were discussions -- I did not know
22 whether or not any of these issues that had discussions,
23 but you never know when they're going to get into the
24 budget. I was told last night it's in the budget. That
25 budget has not even been released yet, but I've been

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1 told, at least internally, that when it is released, and
2 that depends on votes being obtained, this provision
3 would be in the budget. So the ideal thing would be if
4 it can be done before it's ever released so it can in
5 fact either be taken out beforehand or at least noted
6 that it's not going to be an issue that will be pursued
7 when the final budget decision negotiations are
8 completed. So realistically, within a week would be the
9 preferred time frame in which to have a decision that we
10 have an agreement, a letter reflecting that can be
11 developed so that this does not continue to be a
12 legislative issue.

13 MS. DAVIS: Mr. Chairman, Dave, thanks for
14 the heads up. Let me just talk about it mechanistically
15 and I think just paraphrase what Mr. Kimball said, and
16 then if there's an objection or concerns, we're still
17 under open meeting. So we're going -- if the Commission
18 wants a different direction, I think we'd have to hold an
19 emergency meeting. Let me just lay it out and show you
20 how it's going to work, I think.

21 We've worked with ADHS over the years with risk
22 assessment, with VRP and with WQARF, and as you all know,
23 a year ago the RBCA rule was passed, and right now we're
24 procuring software for the Tier One, Tier Two aspects of
25 that. So as most of you know, the Tier One and Tier Two

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1 are basically data exercises where you use a lot of
2 off-the-shelf numbers, you plug them into a spreadsheet
3 and you look at them and you say, you know, is it good or

4 is it not. And in the agreement, ADEQ is keeping that
5 in-house. There would be a person that would work for
6 Jeanine that would review those.

7 The other kinds of risk assessments that
8 Mr. Kimball are referring to are -- VRP especially is our
9 big program that this impacts, and then I would imagine
10 there's going to be one or two maximum a year that are
11 going to come out of UST that are Tier Three, and to use
12 Will Humble's language, the risk assessor at ADHS, those
13 are where there's completed exposure pathways where
14 someone is actually exposed to a contaminant where risk
15 assessment has to be done and that exposure level is
16 below the threshold, and that is not our area of
17 expertise at the agency. That is a public health issue.
18 That's a public health assessment, and we certainly want
19 ADHS to be in the business of what they're in the
20 business of, which is public health, and the other is
21 more of a technical determination.

22 The other piece is to keep them -- to keep the
23 Tier One and Tier Two hopefully with the software that
24 will be provided, it's a much more efficient way of
25 getting them in and getting them out and processing them

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1 quickly without getting them to another agency.

2 So I think that capsulizes, I think, a little
3 more program specific because I think with the UST
4 committee, the issue will be -- I'm a little bit tongue
5 in cheek. We don't care who does them, let's just get
6 them done, and ADHS has said they want to stay in the
7 business of public health risk assessment and not
8 necessarily more of the technical assessment or the
9 spreadsheet assessment. So Tier One and Tier Two fell
10 into more of a technical numbers assessment, whereas Tier
11 Three, which will go more for a public health assessment.

12 MR. KIMBALL: If I could just follow up
13 because I have a question. Shannon, I apologize, this
14 just popped up last night. That's why I'm going to talk
15 with Phil, and I left a voice mail with Patrick last
16 night as soon as I got it, and I suspect he may not have
17 discussed it. Let me tell you one of the reasons why the
18 letter becomes critical and I want to be sure that DEQ
19 understood this issue and I haven't had a chance to talk
20 with DHS.

21 One of the areas that I'm confused about and
22 one of the reasons why the letter is important
23 clarification is from those of us on the private side,
24 one of the key issues is that we would anticipate that we
25 would be looking for a site-specific risk-based cleanup

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1 standard different from default when, frankly, there is
2 no public exposure because the more or less exposure
3 there is, the more likelihood that you could have a
4 different cleanup standard because you don't end up
5 having those exposure assumptions that you do in your
6 current default numbers.

7 So I heard Will say the same thing, that I
8 really want to do Tier Three, and he described Tier Three

9 as where there really is a clear exposure, and I said,
10 "Wait a minute, Will. I want to be sure we have the same
11 agency performing the same function, coming up with
12 consistent approvals, particularly anywhere that there is
13 an application to come up with a different number than
14 what's established in the books or from a formulated
15 approach, and that is always going to occur where there's
16 less public exposure because with less public exposure,
17 you can leave more residual than what you otherwise might
18 not." So when I asked that, he says, "Oh, of course,
19 those would be the ones we" -- well, those are just the
20 reversal of him telling me what I really want to look at
21 is where there's exposure.

22 So I'm confused. I don't know whether that can
23 be done in a formulated scenario because I don't know how
24 the system really works, but that's why it becomes a
25 critical issue that the letter would be helpful in

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1 clarifying, and frankly, with the language at least as
2 was read to me last night was literally just a call to
3 DHS and that isn't going to be the most efficient for the
4 reasons that you just articulated. There are certain
5 things on the cusp you seem to be a little bit or
6 efficient or the underground storage tank as well and do
7 some of these more technical approvals. So that's one
8 area that I'm confused, and hopefully there can be some
9 elaboration on that particular issue in the letters that
10 I know you're working on.

11 CHAIRMAN O'HARA: Thank you. Mr. Pearce,
12 you have a comment?

13 MR. PEARCE: Yes. Thanks. On that last
14 issue, I just want to repeat one more time, I have been
15 doing so for the last several months, and I was hoping
16 that the department provide some update on the placement
17 of disbursement that will service the Tier Ones, Tier
18 Twos. Is there anything new on that to provide some
19 update on the direction the department has obtaining
20 that?

21 MS. DAVIS: Mr. Chairman, John, real
22 quickly, actually, the risk assessor with the rule writer
23 is one of my top priorities in my division for hiring,
24 and we've been waiting -- we've been waiting for this to
25 settle down to see where it's going to go because for all

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1 I knew, UST was going to be over in ADHS. So this has
2 been a critical piece to get that resolved, and I'm going
3 to push the hiring, if I can, upstairs. So it's critical
4 as far as I'm concerned, and that person as it stands now
5 will be working for Jeanine.

6 MR. PEARCE: Thanks. Secondly, I had
7 another point, and that was, can I get those numbers
8 straight on -- this is back to the release issue again.
9 We don't have the benefit here in the peanut gallery of
10 the statistics that were reported since 1999, how many of
11 them have apparently gone in for SAF coverage. Did I
12 hear correctly that there was 577 releases since January
13 of 1999 reported where only -- was it that none of them

14 requested SAF coverage?

15 MS. NAVARRETE: Yes -- no, you didn't hear
16 that. Yes and no. I provided the Policy Commission with
17 some numbers so that they could make a decision on what
18 kind of reports that they wanted for their decision
19 making. There are 577 releases reported since January 1
20 of 1999 that have not had an application submitted.

21 MR. PEARCE: That's just astounding to me.
22 I just don't understand how that could possibly be. Is
23 there some explanation for that? That's four years --
24 more than four years of history since a release where no
25 one has gone for an SAF claim.

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1 MS. NAVARRETE: No. I didn't say that.
2 577 are just the releases that have not had an SAF claim
3 on them. The claims -- I give reports on the claims to
4 the Policy Commission --

5 MR. PEARCE: Right. I'm just saying
6 that --

7 MS. NAVARRETE: -- of the number of claims
8 that have resulted from those releases. 577 haven't. I
9 don't know the totals, John. I didn't bring that with me
10 today.

11 MR. PEARCE: Of the total releases?

12 MS. NAVARRETE: Total releases since
13 January 1, 1999.

14 CHAIRMAN O'HARA: Judy, could you give John
15 the answers to those questions specifically?

16 John, do you have any other comments?

17 MR. PEARCE: Well, just to wrap up, I think
18 we've got to be really careful with making decisions
19 about a number of claims that are looking for coverage
20 and a number of claims that aren't and using that as a
21 basis to figure out what to do with the phase-out of the
22 fund. I think that information needs to be extremely
23 accurate for such a decision to be made. I think
24 Mr. Trembly raises a really good point also about the
25 need to identify and get a grip on how many tanks are out

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1 there that have not been reported. I just worry about a
2 premature recommendation by the Policy Commission.

3 CHAIRMAN O'HARA: On the same topic, as
4 we're going to be studying phase-out in conjunction with
5 the director's roundtable, if there's any data that the
6 Commission members feel like would be pertinent to that
7 issue, such as working tanks or number of claims, you
8 could make the request to either me and I'll forward that
9 Al to try to get all the data that we can and then a
10 decision.

11 Any other comments or questions?

12 MS. CLEMENT: Mr. Chairman, on the risk
13 assessor question, it's not on our agenda, and having
14 just gone through ethics training, I don't believe we can
15 actually vote on that, and I, frankly with the confusion
16 that Mr. Kimball has expressed regarding what DHS is
17 actually intending to do and the fact that they do have
18 this experience in this state, I'd prefer to have a

19 special session and suggest that we do that includes
20 those people that we've been talking about and understand
21 more clearly of what's being asked of us.

22 CHAIRMAN O'HARA: My understanding was, and
23 maybe I'm incorrect, but Shannon was going to prepare a
24 letter and that was going to solve it. There's no time
25 for us to have a meeting to make a recommendation.

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1 MS. MARTINCIC: The problem is what if we
2 don't all agree with that letter? That's the point.

3 CHAIRMAN O'HARA: So Commission members
4 feel they want to have a meeting on this topic and make a
5 recommendation?

6 MS. MARTINCIC: I don't feel I have enough
7 information to know that I'm comfortable having DEQ do
8 Tier One, Tier Two and Tier Three going to DHS, and I
9 feel that -- I feel that it warrants more discussion.

10 CHAIRMAN O'HARA: Do the Commission members
11 feel -- do you want to have a meeting?

12 MR. SMITH: I think it's an opportunity to
13 join forces with the WQARF advisory board to come up with
14 a workable solution, and I think it's important that we
15 go as a united voice with the department to the
16 legislature, and I think we need some help from
17 Mr. Kimball, one, exactly what he is asking us for, and
18 is there going to be some more data that we can have so
19 we can make an intelligent decision, as Gail brought up,
20 do we support or don't we support.

21 MS. MARTINCIC: Let's do a conference call
22 or Wednesday or something.

23 MS. HUDDLESTON: You have to have to
24 have -- it has been done, but I don't think it's been
25 done well where they've tried to provide a phone to the

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1 public. You usually need to have a meeting.

2 MR. SMITH: Maybe what we need to do is
3 have members on a conference call and have one or two of
4 us who are available in an area like this where the
5 public can attend and can voice their opinion.

6 CHAIRMAN O'HARA: And the timing of this
7 is, you said, a week?

8 MR. KIMBALL: As I say, I know DEQ and DHS
9 are working on the letter. All I wanted to alert
10 everybody to was that it's moving a little bit faster
11 than I anticipated because now it really is in the
12 process. It really depends on how quickly a letter could
13 be extradited, and that would trigger then an opportunity
14 to have a discussion so that hopefully we can -- it's
15 going to be important for all of us, basically.
16 Everybody needs to be essentially on board to say, "Look,
17 guys, we've resolved our own problematic issues. We
18 don't need to have a legislature get involved in at this
19 level."

20 MR. SMITH: But we will need a 24-hour
21 notice to hold our meeting for the public to be able to
22 attend.

23 CHAIRMAN O'HARA: Okay. So we'll get with

24 Al and set the meeting next week or something.

25 MR. SMITH: Whenever we need to jump.

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1 MS. CLEMENT: Could we look at our
2 calendars, I would suggest, now and get some dates out
3 and that way we can have as many participants as possible
4 because this is a very critical issue to many people.

5 CHAIRMAN O'HARA: I presume it's going to
6 be next week, based on the timing.

7 MS. CLEMENT: So if you need it in a week,
8 it would be the 5th or 6th of May, is that correct,
9 Monday or Tuesday?

10 MR. SMITH: Is that going to be enough
11 time, Dave?

12 MR. KIMBALL: I got this call last night.
13 I'm going to go, as soon as done over here, I've got a
14 1 o'clock to talk with these folks to find out the
15 specifics. So what I'll do is I'll report probably
16 through Shannon what I hear, and I'm going to ask them
17 for as much time as possible. In light of the way the
18 budget negotiations are going, it ought to be adequate.
19 They're having difficulties getting the votes they need,
20 so I think we've got a good week. I wouldn't want to go
21 beyond that just because once they make a decision, this
22 thing will go extremely fast, and we'll be lost in the
23 shuffle.

24 CHAIRMAN O'HARA: So we said Monday or
25 Tuesday.

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1 MR. SMITH: Tuesday afternoon.

2 CHAIRMAN O'HARA: We'll do what you
3 suggested. We can have a conference call here so we
4 don't necessarily -- we'll have to have a meeting room.
5 I'll coordinate with Al today or tomorrow.

6 Great. Any other comments?

7 Okay. Without objection, I'm going to adjourn
8 the meeting. Meeting adjourned. Thank you.

9 (Whereupon, the proceedings were concluded
10 at 12:00 p.m.)

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