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1 ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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3 MEETING OF THE

4 UNDERGROUND STORAGE TANK POLICY COMMISSION

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7 Phoenix, Arizona

8 January 28, 2004

9 9:00 a.m.

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11 Location: Arizona Department of

12 Environmental Quality

13 Conference Room 250

14 1110 West Washington

15 Phoenix, Arizona

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1 COMMITTEE MEMBERS PRESENT:

2 Gail Clement, Chairperson

3 Hal Gill, Vice Chairperson

4 Roger Beal

5 Shannon Davis

6 Theresa Foster

7 Andrea Martincic

8 Michael O'Hara

9 Myron Smith

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P R O C E E D I N G S

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CHAIRPERSON CLEMENT: I'd like to welcome

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everyone. This is a call to order for the January

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28th, 2004 UST Policy Commission Meeting. I'd like to

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start with a roll call. And, Theresa, you start.

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MS. FOSTER: Theresa Foster.

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MS. MARTINCIC: Andrea Martincic.

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MR. GILL: Hal Gill.

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MR. O'HARA: Mike O'Hara.

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MS. DAVIS: Shannon Davis.

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MR. BEAL: Roger Beal.

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MR. SMITH: Myron Smith.

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CHAIRPERSON CLEMENT: The first order of the

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meeting are approval of the November and December 2003

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meeting minutes for the policy commission. Are there

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any comments, questions? Do I have a motion for

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approval?

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MS. DAVIS: So moved.

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CHAIRPERSON CLEMENT: All in favor, say aye.

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(Response)

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CHAIRPERSON CLEMENT: All opposed? None.

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Okay. First of all, I just want to welcome everybody.

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This is my very first meeting as the UST Policy

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Chairperson. And I'd really like you to feel free to

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1 give us your ideas, your thoughts. We have to go
2 through a formal process, obviously, because this is a
3 formal meeting, but we really are interested in what
4 people have to say. We want this policy commission to
5 reflect both the interests of the community that's
6 regulated and the Arizona DEQ who has the
7 responsibility to regulate.

8 So I really welcome everybody this morning.
9 I'm glad to see you. And please bear with us as I get
10 into my role as the new chairperson, and be patient a
11 little bit. And if we lose track of anything or forget
12 anything, please don't hesitate to let us know. But
13 welcome.

14 The first agenda item is the ADEQ updates.
15 And I believe we'll start with the SAF monthly report
16 from Judy Navarrete with ADEQ.

17 MS. NAVARRETE: And it's in your packets, the
18 State Assurance Fund monthly report. And last month we
19 got everything out of backlog except two applications
20 that were in application notification. So we're pretty
21 current, very current.

22 And on appeals, the informal appeals, we have
23 got them down a little bit, hoping to make a big
24 reduction in the coming month. And the formal, we're
25 about average on the formal appeals, the numbers. And

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1 there was a couple of other announcements I wanted to
2 make this morning, as we opened a rule docket, opened
3 the docket January 22nd, '04, and it should be
4 published February 6th. And also we did a ranking and
5 ranked everything that was on waiting in ranking for
6 Maricopa County. So the points were down to 7.13 in
7 Maricopa. And hopefully we can keep Maricopa current.

8 MR. O'HARA: I missed that. 7.13?

9 MS. NAVARRETE: Yes.

10 MR. O'HARA: In Maricopa County?

11 MS. NAVARRETE: Yes. That was everything
12 waiting in ranking. So we're hoping to keep Maricopa
13 and non-Maricopa both current.

14 CHAIRPERSON CLEMENT: Judy, when do you
15 anticipate to be current on Maricopa County, knowing
16 where you're headed?

17 MS. NAVARRETE: I'm hoping to be able to pay
18 them as we process them. That's my hope. That's what
19 I'm looking at right now.

20 MR. O'HARA: You've gone from two years ago,
21 an 80-million-dollar deficit number of claims versus --
22 amount of money. And now we have almost gone -- erased
23 that entire --

24 MS. NAVARRETE: You wouldn't erase the
25 liability to the fund because of the preapprovals. And

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1 right now I'm going through an audit. I'm having an
2 auditor audit all the preapprovals. We are turning off
3 the ones that have had the last direct pay against them
4 and then sending out letters on ones that have not had
5 any activity in the last year and asking them if they
6 are through with those preapprovals. That's the only
7 way we'll know the liability of the fund is what's in
8 preapproved work.

9 MR. O'HARA: It's hard to put into words, but
10 we used to have about a two- to three-year backlog or
11 turn-around time waiting on the money, and now you're
12 saying that must be down to seven points a month ago.
13 That's incredible.

14 MS. NAVARRETE: I think a lot of the
15 liabilities were counted twice because you had the
16 pre-encumbrance and then you had -- that's the way the
17 accounting was done.

18 MS. FOSTER: Two weeks ago we were at 48
19 points and today we're at seven. Something doesn't
20 sound right.

21 MS. NAVARRETE: What do you mean two weeks
22 ago? I haven't done a ranking in Maricopa County since
23 October.

24 MS. FOSTER: The letter that was sent out said
25 the current ranking was 48 points.

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1 MS. NAVARRETE: They pick up those ranking
2 points but they're not always current.

3 MS. FOSTER: So that's incorrect information
4 on the letter?

5 MS. NAVARRETE: No. You know what, if you
6 want to ask that question, I'm going to bring somebody
7 in that does those letters.

8 MS. FOSTER: I would ask ADEQ to be more
9 precise on their letters. That's all.

10 MS. MARTINCIC: Judy, I have a question. I
11 just wanted to know what the rule docket is for that
12 was open. Is that the DEUR or is that the SAF or
13 something else?

14 MS. NAVARRETE: John always -- we issued to
15 the Secretary of State's office a Notice of Docket
16 opening for the ASAF rule, Title 18, Chapter 12,
17 Article 6.

18 CHAIRPERSON CLEMENT: And a follow-up to what
19 Andrea just asked. So that means we are -- now DEQ is
20 going to begin an official rule development process?

21 MS. NAVARRETE: Just the very beginning
22 stages.

23 CHAIRPERSON CLEMENT: Do we have a schedule or
24 bench marks or anything prepared at this point in time
25 that you could present?

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1 MS. NAVARRETE: No, we do not.

2 CHAIRPERSON CLEMENT: Would you be prepared at
3 our next meeting to provide an update on that?

4 MR. ALSPACH: That's really difficult to do
5 because, as I'm sure most people are aware, there are
6 going to be some statutory changes going through the
7 legislature this year. And we're going to be
8 monitoring those. That work on the rule that does not
9 appear to be subject to legislative change we can
10 continue with, but we're certainly not going to have a
11 complete docket in for our complete rule for informal
12 review until after we know what is going to shake out
13 of the legislative sessions.

14 MS. DAVIS: John, I think we can as the agency
15 bring back a very high level overview of how the rule
16 process works and give some very, you know, basic time
17 lines and bench marks. For instance, the legislative
18 process would be a bench mark that would affect the
19 rule but we can get something very high level.

20 John, I'm sure you're thinking of all the
21 details which we can't provide now but we can do
22 something high level for next meeting.

23 CHAIRPERSON CLEMENT: Thank you.

24 MS. DAVIS: Yes.

25 CHAIRPERSON CLEMENT: Any other questions on

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1 that? All right. Judy, was that the full report that
2 you had for us today?

3 MS. NAVARRETE: Yes.

4 CHAIRPERSON CLEMENT: UST Corrective Action
5 Workload Status Report. Joe Drosendahl.

6 MR. DROSENDAHL: Yes. I'm the acting Section
7 Manager of the UST Corrective Action Section. The
8 numbers that are in the packet, they have gone down a
9 little. That's due to the holidays and also with the
10 transition in between the management of the section.
11 Those will be improving in the future. And I still
12 intend to work with Al and people internally to make
13 the numbers that I present more readable,
14 understandable and show trends and everything.

15 CHAIRPERSON CLEMENT: Are there any questions
16 for Joe, comments on his materials?

17 MS. FOSTER: I still ask the same question I
18 ask every month. If I look under the assessment status
19 report, I'm not seeing any risk assessments being
20 approved. Am I misreading this information?

21 MR. DROSENDAHL: No. That doesn't mean that
22 there's not work being done on them. We're currently
23 working with the Capacity Development Section to
24 streamline that whole process to, you know, increase
25 the number of risk assessments that are being worked on

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1 so --

2 MS. FOSTER: For those risk assessments that
3 were previously submitted, will you request any
4 additional formats or additional information if you go
5 through this capacity development?

6 MR. DROSENDAHL: Mostly it's just the internal
7 interaction between the two sections. That's not
8 saying that during the review process additional
9 information may be required but not a whole new format
10 being submitted.

11 MS. FOSTER: All right. Thank you, Dave.

12 MS. DAVIS: Theresa, I share your complete
13 frustration with the risk assessment numbers on a
14 monthly basis. Two things that have been helpful to me
15 every time I look at the static numbers. What Joe said
16 is true, is just after they get out of risk assessment,
17 two things that are going to help simplify this.

18 One is a boilerplate. When we actually get
19 those reviews from the existing, then they'll go over
20 to corrective action. And we're sort of having to do a
21 DOS-to-Windows translation of the data.

22 So one, there will be a boilerplate letter
23 that we'll be able to send out. Two, the huge key to
24 making this streamlined and efficient and consistent,
25 which is the two things that are important, is when the

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1 tier-two software finally gets online and available for
2 everyone to use, then every single risk assessment will
3 be done using the same software, and our new risk
4 assessor will be able to review that standardized
5 software piece. So we're in between the dinosaur age
6 and going computer. But our eye's on the ball.

7 MS. FOSTER: Some are almost four years old.

8 CHAIRPERSON CLEMENT: Shannon, when do you
9 anticipate that software to be available to the
10 community?

11 MS. DAVIS: We had hoped for it to be there
12 already. That's a good question. We're having some
13 challenges working with the software engineers getting
14 what we want. I'm hoping it's going to be out in the
15 next couple months. But we'll report back more
16 specifically next meeting.

17 CHAIRPERSON CLEMENT: Okay. Thank you. Mr.
18 Gill.

19 MR. GILL: Still working on trying to
20 determine what the most common deficiencies are because
21 I note again on the cap status report, every single one
22 that there's a notice of deficiency. I think I counted
23 eight out of the entire list, and the same thing on
24 SERs, and I know that you said you were working on a
25 list, trying to figure out what is the most common,

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1 denials or deficiencies --

2 MR. DROSENDAHL: That should be in your
3 packet. I put those together not only for CAPs but
4 site characterization reports and LUST case closures.
5 This list will, you know, will be updated when, you
6 know, new deficiencies are either solved or new ones
7 come up. And I will put this on the bulletin.

8 MR. GILL: Okay. Thanks, Joe.

9 MS. DAVIS: So, Joe, you and I have talked
10 extensively about this. The corrective action process
11 is Joe's number one priority right now in the
12 Corrective Action Section to get squared away. And
13 right now what he's doing is he's working internally
14 with his staff. What we need to do is we need to get
15 that review process being efficient and very simple and
16 very clear. I think we have been a lot more detailed
17 and cumbersome than we need to.

18 So the corrective action plan is the first --
19 is the most important thing Joe has on his list. And
20 then after we get our ducks in a row internally, what
21 we want to do is we want to take a compliance
22 assistance workshop out. We may do that at the program
23 conference in June.

24 And then the other two pieces, the site
25 characterization report and the LUST closure report, if

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1 we see the need to do a compliance assistance workshop
2 with the regulated community, we'll do that as well,
3 but right now they are working really hard on the
4 review process for the corrective action plan.

5 CHAIRPERSON CLEMENT: Thank you. Joe, just in
6 follow-up to this report, the deficiencies, are these
7 in any order of priority?

8 MR. DROSENDAHL: No, they're not.

9 CHAIRPERSON CLEMENT: Okay. Thank you. Any
10 other questions or comments? The next agenda item is
11 the number of new releases from upgraded tanks and
12 types of tanks. And, Ron Kern, you were going to
13 report on that?

14 MR. KERN: Yes. I'm Ron Kern with ADEQ. And
15 basically on the last page of your ADEQ report is a
16 one-page presentation of the information that you
17 requested, and it was requested about two meetings ago
18 by the policy commission to provide information on the
19 number of tanks out there that had releases that were
20 also upgraded and/or new and where those releases were
21 coming from in those tank systems.

22 To say the least, this was a challenging
23 quarry for our data systems here at the agency. And I
24 can go into that more if you choose, but suffice to
25 say, there are the numbers. So basically I tried to go

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1 from a standpoint of what the construction was on the
2 tank system; steel, fiberglass single wall, fiberglass
3 double wall or a composite sort of system, and then
4 made the assumption that the piping was exactly the
5 same which is not always a good assumption.

6 I made the assumption that on data quarried
7 after January 1st, 1999, which was most post the
8 upgrade date of 12-22-98, that all the tanks were
9 upgraded that had releases. I think everybody
10 recognizes this may have some fallacy in it, but I had
11 to make some gross assumptions, and those gross
12 assumptions are stated at the bottom of this table.

13 So I will tell you flat out, based upon the
14 assumptions, based upon the quality of the data and the
15 data that have been entered into the data base because
16 some of the data are very dependent upon the
17 notification form which are voluntarily reported to us,
18 that this is a little bit arm waving. But here's the
19 data. And I will be happy to answer any question to
20 the best my ability.

21 MS. MARTINCIC: I would just ask, is there any
22 way -- I appreciate you doing this because I know we
23 had asked for this a couple months ago. Is there any
24 way that you can add an extra column in there that
25 would specify the size of the USTO in those categories,

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1 because I think, if I remember correctly, that was --
2 part of the discussion had to do with insurance and the
3 new different types of tanks being able to get
4 insurance and which class, sort of which size of UST
5 owner was affected by that.

6 MR. KERN: I could do that. It's going to
7 exaggerate the lack of confidence or the error that's
8 introduced to this whole process. I mean, I can do
9 that, but you must realize it's only going to be an
10 approximation.

11 MS. MARTINCIC: Just as this is?

12 MR. KERN: it's going to be a further
13 approximation.

14 MS. MARTINCIC: I'd like to have that
15 information. I don't know if the rest of the
16 commission --

17 MR. KERN: I can try to put that together.

18 CHAIRPERSON CLEMENT: And, Andrea, Ms.
19 Martincic, just to be clear, you're asking for the size
20 of the tanks relative to this these categories also.

21 MS. MARTINCIC: Yes, because in the discussion
22 that we had a couple months ago, it had to do with the
23 tie-in to insurance. And we had heard from a member of
24 the audience that there were new requirements that
25 insurance was placing on owners in order for them to

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1 get insurance for their tanks, and it had to do with
2 them being steel walled and different things like that.
3 And I'd like to see whether that disproportionately
4 affected a class of UST owner than another.

5 MR. KERN: I don't think it was the size or
6 gallonage of the tanks she was after. Is it a small
7 business owner, is it a mid size business owner, is it
8 a large business owner? Where is that release universe
9 coming from?

10 MS. MARTINCIC: Which is the categories that
11 you guys use, right, to classify, small, medium and
12 large?

13 MR. KERN: I really don't but I know what the
14 categories are. And I can try to get that information
15 and put them into those categories.

16 MS. MARTINCIC: I think that there was another
17 handout we had gotten that divided UST ownership out
18 that way, so we could use those same standards.

19 CHAIRPERSON CLEMENT: Ms. Foster.

20 MS. FOSTER: Ron, thank you for the document.
21 I know it took a lot of hours to put it together. I'm
22 real concerned about going down this pathway because I
23 look at this report and I already know it's very
24 inaccurate. We're taking the assumption that all tanks
25 were upgraded. I pulled some records that we reported

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1 a release from this time period off of an abandoned --
2 bare-steel tanks and a LUST number was created from it.

3 So I don't think the current data base can
4 provide accurate information that we should rest our
5 opinion on. Even the size of the tank owner, the
6 notification form does not list what size you are.
7 Somebody's going to have to actually go in there and
8 make that determination. And it's going to be
9 inaccurate.

10 I don't know if we want to use up a lot of man
11 power to update this list, to go back and correct it.
12 I think the validity of it is very questionable, and
13 I'd say it's nice information to have. Let's stop.

14 CHAIRPERSON CLEMENT: Ron, what level of
15 effort will it take and what error factor do you think
16 you introduce by understanding whether they are small
17 tank owners versus large tank owners? How accurate do
18 you think you're going to be able to get to try to
19 answer Ms. Martincic's question?

20 MR. KERN: Recognizing that I only have a fair
21 degree of confidence in the data that I presented here
22 today -- that's why I'm saying a gross approximation --
23 it's going to exaggerate that approximation. So my
24 degree of confidence is certainly going to decline.
25 How much it's going to decline? I do not know. I

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1 mean, again, I guess I put this into the category of
2 back of the envelope to the best of my ability trying
3 to get the information you're requesting, but
4 recognizing that the source of a lot of the information
5 is voluntary. And it's a question of that information
6 going into the data base and then what information we
7 have been tracking previously and today. So it's going
8 to increase the degree of error.

9 CHAIRPERSON CLEMENT: Ms. Martincic, do you
10 have any comments on that?

11 MS. MARTINCIC: I guess the commission is
12 interested in knowing how small business is impacted by
13 the discussion that took place two months ago. So I
14 guess maybe I need to do my own poll with other
15 associations to try to find out the information.

16 MR. O'HARA: I'm trying to understand Ms.
17 Martincic's point. I think you're trying to see these
18 categories of upgrade tanks. The issue was, if they
19 are not double walled, they might have a higher premium
20 on insurance?

21 MS. MARTINCIC: Or not insurance all together.

22 MR. O'HARA: So really the categories we're
23 trying to break up is majors and non-majors? Is that
24 too broad?

25 MS. MARTINCIC: Well, I thought that DEQ

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1 already had the classification structure to know if
2 it's considered based on the financial stuff from SAF.
3 I thought whether someone's considered small or large,
4 I have seen that on other documentation. And so I was
5 just wondering if you could break out for this as well
6 but if that's not possible --

7 MR. O'HARA: Would it help if we could just
8 survey the majors and maybe add some information? Do
9 the majors do double wall? Do they do a mixture? What
10 does a major do?

11 MR. SMITH: It's not a standard type. We have
12 put in double wall, we have put in single wall, we have
13 put in composite, but, you know, when you do that, you
14 do fill out a form to the ADEQ identifying what type of
15 material, construction, piping you have in the ground.
16 But it's on paper.

17 MR. O'HARA: But it's a mix. You don't do all
18 double wall?

19 MR. SMITH: No?

20 MR. GILL: It's been two months, evidently,
21 from what you said since the request was first brought
22 forward and I'm -- I think, before we can decide as a
23 group what is valid information to receive, I think we
24 need to understand what we're trying to get out of the
25 information. And my understanding two months ago is

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1 that the concern was that different types of tanks were
2 going to create problems with getting insurance or not
3 being able to get it at all, meaning the majors, if not
4 all the majors don't have to go after insurance because
5 they are self insured.

6 That's why that would be important to this.
7 It's been a while back. If we can discuss, what are we
8 trying to get out of this information a little bit,
9 find out --

10 MS. MARTINCIC: That's my recollection is the
11 discussion was on insurance. And we had heard from a
12 member of the public at that meeting that this was a
13 concern, and we had asked if we could get information
14 on how many tanks in the state were double walled. I
15 guess we weren't specific enough in further, I guess,
16 categorizing the information we wanted.

17 CHAIRPERSON CLEMENT: Ms Foster.

18 MS. FOSTER: What I remember of the request
19 was something that I stated a couple of times that I
20 wanted to know, if the millions of dollars spent on
21 upgrading tanks, did it have a significant impact on
22 reducing the amount of the releases?

23 In terms of whether tanks are double wall,
24 single wall, steel or fiberglass, this only entails
25 those that are leaking, not the entire picture. So

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1 maybe that's something DEQ can do for us, say, of all
2 the 17,000 tanks or whatever in the state, how many are
3 double wall, how many are fiberglass, how many are
4 steel? Would that help up out?

5 MS. MARTINCIC: That's the second column.
6 Isn't it? Total number of UST systems?

7 MS. FOSTER: That's true.

8 MR. KERN: Maybe I could take these data and
9 just use them as a given and then look at the numbers
10 of releases, which we have a pretty good handle on as
11 far as an annual basis, and I can look at them and just
12 apply those statistics at that point to this picture.

13 And that might be the best way to at least get
14 an idea of, are we getting -- are there majors or are
15 they smaller business folks who are associated with
16 these releases and which category release, which
17 category system? Would that be an acceptable
18 alternative?

19 MS. MARTINCIC: Primarily interested in which
20 type of system most people have based on the size.

21 MR. KERN: It will not be an exact science but
22 I'll give you my best shot at it.

23 CHAIRPERSON CLEMENT: Mr. Beal.

24 MR. BEAL: I have three things, if I can
25 remember that many. One is, I'm very concerned about

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1 creating a document that's suspect from the outset and
2 any numbers anywhere that people will take in the
3 future and say this must be true because we generated
4 it. So I don't like that.

5 Secondly, as far as the insurance is
6 concerned, I think the number of who owns the tanks is
7 not going to have the impact on the insurance industry.
8 So I think that this may be a path for Andrea to look
9 at, small owner/operators, and see what percent of
10 tanks are owned by them. So you could say if 80
11 percent of the owner/operators have single wall, you
12 can expect this type of insurance impact on that
13 segment of the market.

14 And then third, if the intent was to determine
15 how effective the '98 upgrades were, then we need to
16 ask the question, how were the leaks determined? Were
17 they from equipment that was put in place or were they
18 found during tank removal to be leaking? And we can
19 say, if any 80 percent of those were determined by the
20 equipment, then the equipment does its job. If 80
21 percent were determined during tank removal, then maybe
22 our upgrades weren't quite as good as we thought.

23 CHAIRPERSON CLEMENT: Ms. Davis.

24 MS. DAVIS: I think Roger just sort of -- I
25 want to help Andrea get at what she's getting at, and

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1 yet I'm afraid that what DEQ has to offer, it's just
2 not going to get us there in a good way. Maybe what we
3 do is help survey. I don't know if we have access to
4 that. But maybe we could survey and just get something
5 much more legitimate in that way.

6 I think that way we can get some credible
7 information, especially if we want to focus on the
8 small business or just small, I would trust the data a
9 lot more that way, and then come back and mix that with
10 talking to insurance people and say, this is what we
11 have. What would the insurance be? I'm so hesitant to
12 use this. We don't have a good data base and won't
13 have one for sometime. that's our challenge.

14 CHAIRPERSON CLEMENT: Ron, when you talk about
15 majors, we're talking about the -- all the oil
16 companies already that are familiar names. And then
17 when you're talking about middle and small, can you
18 define this language a little more precisely because I
19 don't know how it's defined in the agency?

20 MR. KERN: And I'll basically just use what's
21 in statute right now, is that a owner who has 100 or
22 more tanks is a large size business owner. And from 10
23 to 100 tanks is a mid-size business owner, and less
24 than 10 tanks would be the small business owner.

25 CHAIRPERSON CLEMENT: So that doesn't

0024

1 necessarily mean majors or minors, right, or anything
2 like that. It's just totally a function of ownership?

3 MR. KERN: Right.

4 CHAIRPERSON CLEMENT: Two questions on the
5 table. One is, how do the size range of ownerships
6 relate to the releases and the type of tanks under that
7 are in place now? And then the other question I think
8 we had before is, if I can recall two months ago was,
9 given that we have made these upgrades, are we still
10 having a lot of releases and where are those releases
11 coming from? And I think they tried to answer to the
12 best of the data base and with a lot of effort,
13 obviously, Ron, which is the first question.

14 The second question -- but I don't think we
15 got to your first question. And it sounds to me from
16 the agency's uncertainty about their data base that we
17 may want to go in another direction with some kind of a
18 quarry or a mail-out. So does that make any -- do you
19 have any comments?

20 MS. MARTINCIC: I think a survey, I would
21 think that the State would want to have information in
22 a timely and up-to-date -- I mean, if you can do that,
23 I would be supportive of that. I'm going to have to
24 obviously poll my own folks for obvious reasons, but I
25 think that would be helpful.

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1 MS. DAVIS: Let us look into that. We'd want
2 to work closely so we would work with the right groups.
3 We'll work with Al and Ron and see.

4 CHAIRPERSON CLEMENT: Let's make this a
5 priority under the financial subcommittee because
6 that's the next meeting. And if we could have
7 something presented at the next financial subcommittee
8 meeting about how to proceed, you know, we won't let
9 this drop another 30 days. We can keep moving on it.
10 Any other comments?

11 I have one other question, Ron, on this. When
12 I look at this it looks like the percentages of steel
13 tanks -- I didn't do the actual math, the calculation,
14 but it just looks like steel tanks appear to have the
15 largest percentage of reported releases associated with
16 them compared to single-wall, fiberglass, double wall,
17 fiberglass or composite. Is that a correct reading of
18 this or not?

19 MR. KERN: That's not saying whether there's
20 true releases from the tank or a lot of these are
21 overfills or spills or something like that.

22 CHAIRPERSON CLEMENT: Thank you. Mr. Gill.

23 MR. GILL: Composite. Is that a material or
24 fiberglass and steel?

25 MR. KERN: It's basically fiberglass and

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1 steel, some sort of wraparound steel.

2 MR. GILL: It's not a new material?

3 MR. KERN: No.

4 CHAIRPERSON CLEMENT: Any other questions on
5 this agenda item? Let's move on. We do have an agenda
6 item on the update on the DEUR Fee Rule. And I have
7 Amanda's name next to it. So Ms. Davis.

8 MS. DAVIS: It is up in the director's office
9 to be signed, the update, and we won't know an
10 implementation date until after the director signs it.
11 It's a three-week effective date.

12 CHAIRPERSON CLEMENT: Do we anticipate the
13 director's signature within the near future?

14 MS. DAVIS: He leaves on a trip for India
15 today. I don't know if he'll sign it before or after
16 he returns. It could be signed today and filed with
17 the Secretary of State. And tell you what, when it
18 gets signed, we'll send an e-mail out to the
19 commission, and then the effective date will be three
20 weeks from that.

21 CHAIRPERSON CLEMENT: Thank you. Any other
22 questions on that?

23 Okay. Next agenda item is a report from the
24 Technical Subcommittee. And Chairperson Hal Gill will
25 provide us that update.

0027

1 MR. GILL: Thank you. Was this on the front
2 table so everybody has a copy of this?

3 MR. JOHNSON: Yes.

4 MR. GILL: I'm going to go down the --

5 MR. JOHNSON: I don't know if everybody up
6 there has a copy of that. I know it was on the front
7 table so you might want to the check.

8 MR. GILL: Check and see if you have a copy of
9 the summary document from the meeting.

10 CHAIRPERSON CLEMENT: It's dated January 21st.

11 MR. GILL: What I'll do is I'll go down the
12 list of issues that we discussed. And we had hoped, as
13 you'll note on the far right in our action item, we had
14 hoped that we were going to have the consensus language
15 in the other document.

16 This was the other document you have, the one
17 that has the big draft across it which is the draft
18 guidance language which was -- this was the document,
19 the language that we're ultimately trying to come up
20 with, and there was a miscommunication. We thought
21 that the suggestions that we had made that are down in
22 the discussion section of the summary were going to be
23 made on this document and we would be able to vote on
24 it for this meeting.

25 But unfortunately they have not been done. So

0028

1 we're assuming that the language from the last meeting
2 will be incorporated in here, and hopefully any
3 language in the next meeting, we'll have to have time
4 to incorporate into this guidance document so we can
5 all vote on it in the next meeting to move forward to
6 the -- well, I assume the next step is going forward to
7 the bulletin and the guidance document, the big
8 guidance document.

9 But I'll just go down the list of issues and I
10 won't go into the language, the language of the
11 document, but just briefly discuss each issue.

12 On each one of these issues, the DEQ had
13 previously released this draft language which I think
14 you also have a copy of. And we were going through and
15 making final changes on some of them. We wanted to
16 move them forward as rapidly as possible, and we made
17 good progress in the meeting. It's unfortunate that we
18 miscommunicated.

19 The first issue was the ground water flow
20 direction issue and measurement, basically how to
21 monitor ground waterways, the number of wells that are
22 sampled, and the survey issues. We all agreed in the
23 subcommittee, we all agreed with the language that had
24 been provided. The one point that came out new is
25 that, and that's in the discussion section here, is

0029

1 that all wells do not necessarily need to be resurveyed
2 when a new monitor well is added. Only the wells used
3 to determine the grading.

4 So if you go out to a site that has 20 wells
5 and you put in one, two or three new wells, you do not
6 necessarily have to survey all of them, but we believe
7 that you need to survey those three and pick the two or
8 three wells in that group that you have chosen to
9 determine your gradient for that site and resurvey them
10 unless there's been some real problem data coming up
11 from your previous gradient direction maps, that you're
12 not necessarily confident that your grading is correct.
13 And you may want to survey all of them.

14 And on that point, Brian Beck said that he had
15 asked the surveyor on one of his sites where he had a
16 large number of wells how much it would cost to survey
17 all of them. And it was 120 bucks. Most of the cost
18 for surveying is getting out there in the first place.
19 Once you're there, surveying all your wells is a
20 minimal amount of money.

21 So if you have a concern about whether or not
22 your elevations are correct on all your wells and you
23 think it may be affecting your gradient direction,
24 which is one of the issues in the ground water study is
25 that they potentially saw anomalies in grading

0030

1 directions -- if you believe that is a concern and the
2 grading is extremely important because that's based on
3 where you put your wells for characterization and so
4 forth, then go ahead and survey all the wells. But you
5 do not necessarily have to.

6 So that was the language to that affect was
7 going to put into the existing language in the draft
8 guidance document or draft guidance language. And that
9 was what was agreed on. So hopefully next meeting
10 we'll have that final language and we can get it to you
11 ahead of time so you can have a chance to read it so we
12 don't have to go through the entire thing in the
13 meeting and you can read it beforehand.

14 Section 1(B) which is aquifer velocity, the
15 discussion was, do we need to have a slug test or a
16 pump test at all sites to determine the velocity of
17 your ground water flow? And it was determined that --
18 actually the language that came out, set up a table
19 giving you an idea of when, based on site-specific
20 conditions of when you would need a pump test and when
21 you could use existing data available in the
22 literature.

23 And the only thing that I can add to that
24 language was where this language could be found in the

25 literature, where the information on particular soil

0031

1 types and aquifer velocity could be found in the
2 literature. So that's some language that will be added
3 for the final one, but the group agreed with what was
4 in the draft language and with just that one addition.

5 1.c, basically that, as you may see in the
6 discussion notes, that basically we referred that to
7 1(D) because we're basically handling the same
8 information or the same type of issues that dealt with
9 site characterization decisions based on conventional
10 wisdom.

11 1.d, Soil Sample Analytical Results As An
12 Indicator That Groundwater Has Not Been Impacted By A
13 Release. This was a huge discussion item as was the
14 conventional wisdom item.

15 And basically we determined -- we agreed with
16 the language that was here in the draft guidance
17 language, but we also agreed that training needs to
18 begin immediately because that's really where the
19 problems are occurring because we wanted to -- this
20 issue with conventional wisdom and when and whether or
21 not to go to a ground water well is really based on
22 experience and knowledge of your site and knowledge of
23 the regulations and the rules.

24 And so the language that we put in here which

25 I made some edits here, we -- basically it was

0032

1 suggested to have ADEQ provide training to potential
2 applicants. And I just kind of suggested that in the
3 document, training be provided to ADEQ, to potential
4 applicants and consultants. We agreed that everybody
5 needs to get training on the general type of issues
6 that occur at sites. And so that's what -- we're going
7 to address this later, but basically what we decided
8 needed to be done to address 1.c and d.

9 CHAIRPERSON CLEMENT: Mr. Gill, just a
10 follow-up question. To the specific points that soil
11 sample analytical results may or may not be -- that
12 ground water has been impacted, what is the essence of
13 the decision out of the technical subcommittee on that?

14 MR. GILL: Well, basically the individuals in
15 the room, you know, brought forth their experience on
16 different types of sites. When it may make sense to go
17 to a ground water, that, basically, if you've got a
18 real course grain site and you've got borings but
19 you're concerned it is not as close to the release,
20 because of the release, may be in the middle of the
21 tank.

22 If you're on -- so your site -- you are
23 concerned and there is a big concern where your boring
24 is located, is not at the release point. And this is

25 not untypical at all because many times you're drilling

0033

1 for a release that's in the tank and it could be --
2 well, even if it's the tank pit on the side, you're
3 still eight, 10 feet away. And if this is a course,
4 grain soil, the release is going to go relatively
5 straight down.

6 So if you're getting non-detects in your soil
7 samples and, based on that, you decide, well, we don't
8 need to go to ground water because it looks like I have
9 got reported leaks, that may be one where if the water
10 table is, say, 50, 60, 100 feet, this might be one that
11 you would look at the potential for putting an
12 underground water well.

13 If it's fine grain soils that, one, you could
14 very well decide, based on my experience, this site may
15 not be appropriate to put a ground water well in. And
16 that's the kind of decisions I was talking about you
17 need to make at the site. But we felt that training is
18 a big part of it.

19 CHAIRPERSON CLEMENT: So basically the
20 training, to just be sure I'm summarizing this, the
21 training will incorporate variable site conditions that
22 will lead to a decision-making progress about where
23 ground water should be stressed or not?

24 MR. GILL: Yes. And other things. The

25 training would cover the entire issue of site

0034

1 characterization and well installation, just the whole
2 activities that are done on site.

3 CHAIRPERSON CLEMENT: The next point is
4 Remediation Confirmation Sampling for LUST Site
5 Closure.

6 MR. GILL: Yes. I.e. There was two issues
7 that came out of this discussion. One of the issues
8 that was brought forth was the confirmation sampling
9 itself, and that's the Remediation Confirmation
10 Sampling for LUST Site Closure. And this would also be
11 part of the training as well. But basically the first
12 issue was, where do you put your confirmation samples
13 for soil to confirm that you've remediated the soil?

14 The other issue which was more specifically to
15 the concerns that were raised in the ground water study
16 dealt with which wells would you use to confirm site
17 closure? And so the DEQ will provide language on the
18 appropriate time frame and frequency for confirmation
19 sampling and also to address which wells you may or may
20 not want, you know, you wouldn't want to use for
21 remediation.

22 And the examples that came up were, take your
23 ground water samples in a well where your air socks had
24 been and the same thing for air spars. Well, there are

25 sites where those are your only wells in the source

0035

1 area. So the issue is how long after you've reached
2 the air sock or how long since you've stopped the air
3 sparring do you wait before you start your confirmation
4 sampling?

5 And so there's a number of issues that have to
6 do with confirmation. And that's the type of language
7 that will be provided. And we basically came up with,
8 and again, a lot of this will be addressed in training,
9 but we basically came up with a time period for
10 monitoring these. Typically one year for ground water
11 mediation but can vary due to site-specific conditions.
12 You can have that in every case.

13 1.f, the one half mile. It was agreed,
14 general agreement, one half mile distance that we see
15 in all of our reports, one half mile to protection
16 wells or one half mile for whatever activity is real
17 common in the literature or different guidance
18 documents. So there was no action item changed on
19 that. We moved 1.g to the next meeting.

20 1.h. 1.i is, we added the language. Again,
21 the issue came out that this was something that has to
22 have further discussion as it says over in the action
23 items. It again goes to the issue of rebound. Rebound
24 is after you monitor all your ground water wells, the

25 ground water analyses indicate that it's below the ADEQ

0036

1 aquifer water quality standard and so you're ready to
2 close your site. The remedial system, you have to wait
3 for the ground water conditions to rebound because you
4 will, in most cases, get a rebound in your
5 concentrations to where it'll come back again.

6 And so the concern, one of the issues that
7 this addressed was how long do you wait before you're
8 ready to close the site and put in the language?
9 Typically one year is an appropriate time to monitor
10 rebound and tie that with the language in 1.e. But
11 there's going to be further discussion on this.
12 There's a lot of other issues that come into it as far
13 as the rental of the remedial system and those kind of
14 things.

15 Section two, we didn't do any discussion.
16 Those were all moved forward to the next meeting.

17 We're down at number three. And I'll let Joe
18 speak to the training program and schedule because I
19 know he said they are working on one, so I'll ask him
20 what the status is.

21 MR. DROSENDAHL: Yes. And I have drafted the
22 training plan and it's being currently reviewed by
23 upper management, so I'll either report back next
24 meeting either the status of it or I'll present it.

25

MR. GILL: Hopefully we can get it presented

0037

1 to the subcommittee so we can look at it before the
2 next meeting. I guess the one thing that I suggested
3 and actually a number of different consultants and
4 people at the meeting had suggested in the past is,
5 there's a number of different types of training.

6 I mean, you can have seminars from which we
7 have all been to where a remedial technology will come
8 in and give their spiel on how it works. But the type
9 of training -- and those, you know, are appropriate,
10 and I think everyone should go to those when they have
11 a chance.

12 But the type of training that we really need
13 is just general activities that go on at a site from
14 the time you get out to the site to the time that you
15 present the site for closure, because that's where we
16 seem to be having most of our problems in communication
17 with DEQ is an understanding both ways of what is being
18 done in the field. And so that was my suggestion is
19 that the training incorporated testing in the field,
20 drilling, basics on how the corrective action is
21 conducted.

22 CHAIRPERSON CLEMENT: Just a follow-up
23 question, Mr. Drosendahl. Will the training program

24 also include field training or opportunities for field
25 training?

0038

1 MR. DROSENDAHL: Yes. It comes at every form
2 of training or gaining more experience and things like
3 that.

4 CHAIRPERSON CLEMENT: Thank you.

5 MR. GILL: Discussion item 4-A was the
6 discussion of language for reporting issues and was a
7 huge discussion item. The general issue, once again,
8 was the applicants, the owner-operators and their
9 consultants, when they submit an application for
10 reimbursement or direct pay, whatever the case may be
11 for a field activity, in the past we have been able to
12 turn in documents or turn in applications based on
13 three months or a quarter over \$20,000 or at the end of
14 a phase of work.

15 And there's been some problems recently where
16 we have been getting denials back with the language
17 that ADEQ has denied all costs as the SCR and
18 associated activities are under technical review; thus,
19 eligibility for these activities cannot be
20 re-evaluated. And that's -- the two issues that came
21 out of the discussion.

22 First, we started with what kind of rationale
23 does DEQ need to describe the field activities that

24 have been completed to get or to allow the DEQ or the
25 SAF to pay or reimburse for interim field activities.

0039

1 And that's what we were working on originally. And
2 then we started getting this denial language in
3 reports. So the second issue was, now we're having to
4 wait until the site characterization report is
5 submitted and approved to get payment. And the Site
6 Characterization Report is not turned in which can be a
7 year. So you can put in numerous wells, borings in
8 between and not get paid for anything.

9 Owner-operators, especially the needy, you
10 know, just cannot -- they cannot carry that cost
11 because the cost can be extreme on a site with 20
12 wells. So what we asked the DEQ and SAF was to clarify
13 because there was some confusion. We had heard both
14 discussions that, you know, they are good rationale
15 which I complete agree with. If you don't have a SCR
16 explaining why you did a segment of work, then I agreed
17 with DEQ that they cannot pay that.

18 The other issue is now we have to wait for the
19 SAR report back to us. What is DEQ requesting? Where
20 are we going? I mean, is it one or the other?

21 MR. ALSPACH: My name is John Alspach from the
22 SAF section. I'm here by default because Ms. Rose is
23 not feeling well today. The SAF, as Mr. Gill said, in

24 the past paid for activities that were undertaken prior
25 to the submission of the Site Characterization Report.

0040

1 We can approve activities in that in-between stage,
2 that interim stage, but the standard of review has to
3 remain the same as we would if we were looking at a
4 completed site characterization.

5 And as Mr. Gill said, we need to have a reason
6 explaining how those activities meet the standards
7 established under ARS 4910.52(d). And 1052(d) is the
8 subsection that states that the department shall not
9 pay for approved costs unless the department determines
10 that the activities have met or when completed will
11 meet the requirements of 4910.04 and 4910.05 as
12 applicable.

13 Those applications that come in with a summary
14 document as to, you know, nothing elaborate, just an
15 explanation of what was done, why it was done along
16 with the supporting cost information seem to make it
17 through the system very well.

18 There are other situations where the
19 department doesn't have sufficient information to make
20 an informed determination that those activities were
21 actually performed so as to meet the objectives of,
22 most cases, 4910.05 corrective actions.

23 To help alleviate some of the consternation

24 that seems to be in the universe of stake holders and
25 to help everybody expedite the process of review, Joe

0041

1 Drosendahl, in his copious free time, is in process of
2 developing a little summary checklist type form that
3 will help the applicants, owners, operators,
4 volunteers, consultants, insure that they have covered
5 the bases of the information that we need to know.

6 And when that form gets drafted, I guess, and
7 gets up through upper management, we're going to put
8 that on the bulletin for everybody, and certainly more
9 than pleased to share it with the commission members.

10 CHAIRPERSON CLEMENT: A follow-up question. I
11 didn't mean to interrupt you, John. Go ahead.

12 MR. ALSPACH: The use of this summary recheck
13 list, or whatever we're going to end up calling it,
14 isn't required. It's simply a tool that can be used
15 to, like I said, expedite the process and to alleviate
16 some of the concern that all the information we
17 basically need to do an evaluation is presented.

18 I don't think it's in anybody's best interests
19 to go through the process and end up, you know, having
20 a huge number of applicant notifications going out
21 simply because what we may need to make that
22 determination wasn't presented initially. All
23 applicant notifications do is delay everybody.

24 CHAIRPERSON CLEMENT: Just a follow-up
25 question. I have had several e-mails and phone calls

0042

1 that would suggest that you've changed your process.

2 And I just want to be clear, if there has been a
3 process change, we need to know about it, or whether
4 you're just -- it's just becoming more evident what
5 your requirements are.

6 If you could clarify that because, at least
7 the information I have received is that, up until
8 fairly recently, people were following a process with
9 interim payments. And then fairly recently that
10 process appears to have changed. And I just want to be
11 clear that you are not or you are changing a process or
12 you're improving it. What's the universe we're looking
13 at here?

14 MS. NAVARRETE: Are you asking, are we paying
15 for the work or are we paying for the SCR?

16 CHAIRPERSON CLEMENT: It's my understanding
17 that up until -- and again, I'm not -- I'm giving you
18 the information I have received from others, so this is
19 secondhand. But up until recently you were paying
20 interim approvals as they came in following a fairly
21 systematic approach.

22 And then recently, it's my understanding, and
23 I may be incorrect, but it's my understanding that the

24 agency, SAF process has said we're not going to pay
25 interims. We're going to wait until the SCR is

0043

1 complete. But that's not what I'm hearing today, so I
2 want to be real clear about this

3 MS. NAVARRETE: We're going to pay for the SCR
4 when it's complete, but the work, as long as we have an
5 explanation with it as to what -- the work was done --

6 MR. ALSPACH: Right, and how it is progressing
7 towards the site characterization.

8 CHAIRPERSON CLEMENT: Has there been a change
9 in your review process, though, because apparently the
10 regulating community feels that there has been. And I
11 just want to make sure that we're clear here.

12 MR. ALSPACH: I don't think so. Are you aware
13 of that?

14 MS. NAVARRETE: I'm not aware of it. I will
15 ask.

16 MR. GILL: Well, I guess basically it's the
17 language such as the one that I read was confusing
18 people because they started -- they were receiving
19 denials with the language saying that they had to
20 indicate until the SCR was done.

21 And you have clarified that today, and I agree
22 with what you're saying. That's what we had asked for
23 two or three months ago, you know, what rationale do

24 you want to provide? I understand you cannot provide a
25 rationale, you know, this is what we would like for

0044

1 everything because an application can be one sampling,
2 another could be installing nine wells. But just
3 putting down the general things that are required on
4 every, quote, unquote, every application is fine.

5 And then I agree completely. And the
6 consultants who were at the meeting agree that the
7 rationale has to be there for you to be able to approve
8 it. I mean, if you don't know why we did this
9 particular work, then why should you pay for it?

10 So I think that's really what we were looking
11 for is clarification because we had had some statements
12 made that we had to wait until the SCR is done. So I
13 think that's cleared up.

14 One other issue that just came out as an aside
15 in the discussion was that we had asked in the
16 subcommittee meeting to -- and DEQ has done this, to
17 call when they are reviewing an application and they
18 have questions to call the owner-operator or the
19 consultant or whoever has the application or done the
20 work. And they said that they were doing, I think it
21 was, like, 20 percent of that.

22 And we asked, is there any way to increase
23 that to 100 percent, because if the problem that we're

24 trying to get away from is appeals, and if a phone call
25 saying, you know, "what do you mean by this" or "this

0045

1 has not been provided" will keep us from an appeal, I'd
2 much rather see time spent on 100 percent phone calls
3 if there's any questions rather than 80 percent in
4 appeal. And 100 percent may be -- there may be some --
5 it's obvious from the application that you need
6 information. You can't get the information over the
7 phone. You need something submitted.

8 But we thought that an increase in the phone
9 calls up front prior to the -- what's the --

10 MS. NAVARRETE: Application notification.

11 MR. GILL: Application notification would
12 really move things forward. And I know the DEQ's doing
13 it. We were just wondering if they could increase the
14 number of calls.

15 MS. NAVARRETE: We try and call whenever
16 possible, and also we try our best not to put things on
17 AN because that delays the process for us and for you.
18 But just making a phone call at times when a reviewer,
19 then we wait for days for a response, the reviewer's
20 sitting there with several applications waiting for
21 responses, and then sometimes they just absolutely get
22 busy and forget that they are waiting for a fax or a
23 response. And then that delays your decision.

24 So I believe if we come up with this checklist
25 of things that, you know, the rationale to be provided

0046

1 and to help you along that way is a better way than
2 just increasing phone calls. We will try and do that.
3 However, I want to stay within time frames in making
4 decisions also.

5 And another thing too that we have gone to is
6 more explanations in the -- if we do have to do a
7 denial, because I have been trained on doing what's
8 called payment determination entry and it's done by
9 hand. Those little work sheets that you guys turn in
10 as to what you've done and the cost involved and how
11 many items are on there, once the cost review has been
12 done, that is entered by hand into the data base so
13 that we can add up all the costs and pay.

14 And to that we have added -- tried to add
15 explanations. And at times when there's a specific
16 condition on a site that hasn't come up before, we have
17 created new codes. And I know that the question came
18 up that people had seen new codes coming out. That's
19 just to try and better explain on that particular
20 situation what has happened.

21 And then another thing that we're doing is
22 making -- it's called the reviewer will do an XXX code,
23 and they'll number them one, two, three, four, five,

24 six, seven. And they will go along with that
25 determination. And those have to be entered by hand.

0047

1 And I'm sure that you've all gotten them. They are
2 explanations that go along with the code and it's a
3 comment to that code. So it is -- we are trying.
4 We're limited in our data base as to what we can do,
5 but we are trying to get you the best explanation
6 possible if we deny something.

7 MR. GILL: Thank you, Judy. That's a huge
8 issue because I know that was one of my number one
9 complaints was just receiving -- you have a code and
10 having no idea how that really applied to what I had
11 turned in.

12 MS. NAVARRETE: This is a very lengthy process
13 and it's all hand generated but we're trying.

14 MR. GILL: And I understand the time that it
15 takes to do these, but I believe that 10, 15, 20
16 minutes explaining a number of codes is a lot better
17 than having to take a half a day out of your schedule
18 to go to an appeal meeting because you have to prepare
19 for it, go to it, discuss it afterwards.

20 MS. NAVARRETE: Right. We'd like to get you
21 enough explanation on there so that if you do appeal
22 those denials you can send in the information with your

23 appeal and then we just take care of it right there
24 with a phone call.

25 MR. GILL: Thank you, Judy. And that's

0048

1 basically all the issues we got to on the agenda that
2 day.

3 CHAIRPERSON CLEMENT: Mr. Gill, just for
4 clarification, we anticipate that at our next full
5 commission meeting we'll have the actual draft guidance
6 language for the policy commission and then we'll be
7 able to have a vote on whether we support it or not?

8 MR. GILL: Yes.

9 CHAIRPERSON CLEMENT: It's called the UST
10 Policy Commission Technical Subcommittee Ground Water
11 Study, parking lot issues.

12 MR. GILL: Draft guidance language. That's
13 where the new language will be.

14 CHAIRPERSON CLEMENT: Any other report out on
15 the technical subcommittee? Any comments, questions
16 for Mr. Gill?

17 MR. GILL: The next meeting, unless there's a
18 change in the meeting date, it's always the second
19 Wednesday of the month.

20 CHAIRPERSON CLEMENT: The next discussion item
21 is the discussion of ADEQ's UST Monitored Natural
22 Attenuation policy. And Mr. Drosendahl?

23 MR. DROSENDAHL: "We" being Al Johnson,

24 mainly -- I assisted him -- developed this monitored
25 natural attenuation policy. We currently have guidance

0049

1 on monitored natural attenuation in our current
2 guidance. And this is just to kind of very clearly
3 state a policy for monitored natural attenuation and
4 its use. And we drafted this and submit it for your,
5 comment.

6 I have also scheduled internal training on
7 monitored natural attenuation issues for internal staff
8 for the middle of February and will continue to do
9 internal training as necessary.

10 CHAIRPERSON CLEMENT: And just some background
11 for everyone. Part of the impetuous, part of this came
12 out of the round table group that met with the director
13 and Ms. Davis over a period of time, and also from,
14 frankly, my experience on the Technical Appeals Panel
15 and the agency's use of monitored natural attenuation
16 in the underground storage tank program.

17 And it was my opinion that it was inconsistent
18 with other guidance documents, federal programs, API,
19 et cetera. So I have read this in some detail. I'm
20 familiar with these guidance documents, and I would
21 really like to see the policy commission, if we can,
22 today vote on this and approve it. And I'm very

23 pleased to see this very responsive and progressive
24 policy move forward. Mr. Smith.

25 MR. SMITH: Again, since you've taken the time

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1 to look at a lot of other documents and how it relates
2 to what Joe has provided for us, we thank you for
3 taking that time. Can you give us a little insight on
4 what you've seen between those and this?

5 CHAIRMAN CLEMENT: I think the main difference
6 in the previous policy that DEQ had was use of
7 monitored natural attenuation without what I think
8 would be commonly considered source control by those in
9 the practice, and only looking at source control, for
10 example, as the tank removal versus the actual mass of
11 residual material that would be even present in the
12 aquifer media or in the soil. So that was one key
13 component I think they addressed here.

14 The other was use of the monitored natural
15 attenuation as the defacto remedy. And it's very clear
16 in EPA guidance, black and white, it should never be
17 used as a defacto -- it should never be the presumptive
18 remedy. And I believe they address that appropriately
19 in this language now.

20 I think the other key in terms of monitored
21 natural attenuation and the whole approach regarding
22 future risk was the defacto use of a tenured time frame

23 without any technical analysis if you didn't have a
24 technical analysis. And I think that this now deals
25 with site-specific evaluations if you're going to use

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1 monitored natural attenuation that are consistent with
2 the federal programs and other guidance that's been
3 presented.

4 MR. SMITH: So you believe that this is
5 complete where we need to be?

6 CHAIRPERSON CLEMENT: I think this is a good
7 policy statement in terms of details. There may be
8 some additional details that have to go into guidance,
9 but this is a policy statement and it should be at a
10 fairly high level. And I think it's well drafted.

11 MR. SMITH: Thank you.

12 MR. GILL: The only concern I had is the last
13 sentence under the definitions of source material.
14 Contaminated ground water is not generally considered
15 to be a source of material. "Is not generally
16 considered." Is that enough to cover the -- I mean,
17 does that leave enough leeway to cover the
18 circumstances when it would indeed be --

19 I mean, because if it's highly contaminated
20 ground water and you have a fluctuating water table,
21 that's indeed smearing, you know. It's not a smear
22 zone, but it is indeed passing contaminants and it will

23 pass it onto the soil.

24 CHAIRPERSON CLEMENT: You've got a source zone
25 in the media affected by the ground water table, so I

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1 personally think this does address it. And we can
2 provide -- it would be my suggestion that level of
3 detail does not belong in a policy statement.

4 MR. GILL: Appendix M is where the monitored
5 natural attenuation is included. And actually I think
6 that is probably going to be one of the first things on
7 the agenda the next subcommittee meeting to go into it.
8 So I will recommend everybody read that so we can go
9 through it and see if there are any changes that need
10 to be made and make sure that it does follow this new
11 policy closely.

12 CHAIRPERSON CLEMENT: Ms. Davis.

13 MS. DAVIS: Madam Chair, just one comment on
14 process. If the policy commission wants to adopt this,
15 I also encourage a letter to the director under your
16 signature. This will again get in the queue for
17 substantive policy in the agency and go through the
18 agency review process. So this is actually what the
19 commission has requested to use the administrative
20 policy process. And here we are.

21 CHAIRPERSON CLEMENT: I'm very pleased about
22 that. Any further discussion? Is the policy

23 commission prepared to vote on this and recommend to
24 the agency a concurrence on this draft policy?

25 MR. O'HARA: The Technical Subcommittee has

0053

1 had an opportunity to review it, and has the chairman
2 of the Technical Subcommittee approved or recommended a
3 vote to approve?

4 MR. GILL: Well, this is the first time I have
5 seen it. I read it through. I mean, I haven't had
6 time to, you know, read it in any detail. Like I said,
7 I only had the first question pop out at me. I don't
8 know. To me it's all general policy statements. I
9 mean, it's not specifics. And I didn't have any
10 problem with the overall intent. And I agreed with
11 what they were saying. I just had that one question.

12 And if we can handle that in the details or
13 explain more in detail what the source is because that
14 is a huge issue and has been, what is the source. That
15 was my only concern. And it's probably because it's
16 policy language. I would like more clarity in the
17 definition. But if we can do that in the details, then
18 I have no problem with it.

19 CHAIRPERSON CLEMENT: Do we have a motion?

20 MS. FOSTER: I'd like to put a motion on the
21 floor that as the policy commission we submit to the
22 director a letter along with this draft policy dealing

23 with monitored natural attenuation and give a
24 recommendation that we approve the policy and that
25 additional clarification will be in future guidance

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1 documents.

2 CHAIRPERSON CLEMENT: Is there a second?

3 MR. O'HARA: I'll second.

4 CHAIRPERSON CLEMENT: All in favor, say aye.

5 (Response)

6 CHAIRPERSON CLEMENT: All opposed?

7 (No opposition)

8 CHAIRPERSON CLEMENT: I think this is the type

9 of work that the policy commission should be doing, and

10 I really appreciate the agency's responses to people

11 present at this meeting.

12 (Meeting Break)

13 CHAIRPERSON CLEMENT: Okay. Reconvene the

14 January 27th, 2004 UST Policy Commission. And we're

15 going to revisit an agenda item. We have a

16 clarification from Judy Navarrete. Judy, would you?

17 MS. NAVARRETE: Judy Navarrete from the State

18 Assurance Fund. I'd like to clarify Theresa's question

19 on why she received a letter saying the ranking points

20 were 48.

21 MR. GILL: It was just her.

22 MS. NAVARRETE: For the last two rankings that

23 we did, the points were 48, and for this last ranking,

24 we just completed it. The points are 7.13. However,

25 we have not sent out any letters yet at the 7.13.

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1 CHAIRPERSON CLEMENT: Thank you, Judy. And
2 that's because basically you do that ranking analysis
3 on a periodic basis so the letters that go out in the
4 next ranking have the previous even if it isn't quite
5 up to date?

6 MS. NAVARRETE: Right, right.

7 CHAIRPERSON CLEMENT: Okay. Next agenda item
8 is the update on state legislation starting UST I
9 and -- can we switch those? Does anybody have any
10 objection if we move agenda item seven in front of six
11 because I think six is going to take us a while. Seven
12 should be brief.

13 Does anybody have any information about state
14 legislation regarding USTs on the commission? It's my
15 understanding, though, the bill has been dropped, yet
16 although we will anticipate that legislation regarding
17 USTs will be forthcoming. Any other information? And
18 I ask even perhaps, Mr. Kelly, if you've got any
19 additional information in this agenda item?

20 MR. KELLY: I don't have any additional
21 information, Madam Chair.

22 CHAIRPERSON CLEMENT: Ms. Martincic?

23 MS. MARTINCIC: No. I was going to go back
24 to -- I don't know if you took that off the financial
25 subcommittee update because we did schedule a meeting.

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1 CHAIRPERSON CLEMENT: Clarify the next
2 meeting.

3 MS. MARTINCIC: Scheduled for February 24th
4 from 1:30 to 4:00 here at ADEQ in Room 4001-B scheduled
5 for February 24th which is a Tuesday, 1:30 to 4:00 in
6 room 4001-B here at DEQ.

7 MR. KELLY: And it's going to be on --

8 MS. MARTINCIC: We'll asset the agenda and get
9 it out, but I think we had an agenda item from today
10 and obviously we have been looking at phase-out issues
11 too so --

12 CHAIRPERSON CLEMENT: Okay. I'm going to go
13 out of order here. I think there's a clarification.
14 Could you hear that, Mr. Merrill?

15 MR. MERRILL: Fred Merrill. And, Madam
16 Chairman and members of the commission, just in regard
17 to item number six, just to clarify, there has been a
18 bill that has been dropped. I tried to check this
19 morning to see if there was a number yet assigned and
20 there is not. There is some discussions among some of
21 the legislators to determine whether they want to add

22 some things to the bill before it is officially
23 numbered and introduced.

24 CHAIRPERSON CLEMENT: Thank you. I appreciate
25 the update.

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1 MS. DAVIS: The agency will be happy to give
2 any legislative updates. We probably won't be sending
3 stuff out in packets because things happen so quickly
4 when an original bill is dropped. They come to us
5 online now, but please keep in mind that it's a long
6 process and we'll be in session. It'll be two or three
7 or four months that everything will be in process and
8 subject to change.

9 CHAIRPERSON CLEMENT: Thanks, Ms. Davis.
10 Jumping back to the previous agenda item, number six,
11 Discussion of the UST Policy Commission Calendar Year
12 2004 goals. And I think we also want to put in that
13 discussion, attendance and assignment of commission
14 members to the policy commission for those vacancies
15 that appear to be present.

16 And can I start with that attendance, if I
17 may? Right now we are an 11-person commission, is that
18 correct, based on statute?

19 MS. DAVIS: Yes.

20 CHAIRPERSON CLEMENT: We have had some
21 attendance problems. And is the agency working to fill

22 those vacancies or are they real vacancies at this
23 point?

24 MS. DAVIS: Madam Chair, I'd want to be --
25 we're working to fill terms that have expired and are

0058

1 expiring, specifically Leandra Lewis who has stepped
2 down because she was once executive director of the
3 organization Arizona Clean and Beautiful, and she's now
4 the Executive Director of the Maricopa County Bar
5 Association. So that was the citizen slot. Is that
6 right, Al?

7 MR. JOHNSON: That's right.

8 MS. DAVIS: And so that slot is available.
9 And I could have brought my file but I didn't but we
10 are actively looking to replace vacancies, but that
11 doesn't address your attendance.

12 And if there are attendance problems, what I
13 would recommend is perhaps as the Chair, you might want
14 to contact the person and then if the person or persons
15 don't continue to show up, there could be a
16 recommendation from the commission for a replacement.
17 I don't know how we have dealt with attendance issues
18 in the past. I'm fairly new.

19 MR. O'HARA: How many vacancies are there?
20 I'm just wondering, who are we missing and who are just
21 vacant that need to be filled? Just one vacancy?

22 MS. MARTINCIC: One is just absent.

23 CHAIRPERSON CLEMENT: And then what are the
24 commission spots that are soon to be up for their
25 appointed time?

0059

1 MS. DAVIS: One I'm aware of is Mr. Tsiolis
2 expires in May of this year. And that's the one I'm
3 aware of. And let me circle back. Ron and I have been
4 working appointments, actually focusing on the
5 technical appeals panel to get that up to snuff but not
6 so much --

7 CHAIRPERSON CLEMENT: Thank you. And I don't
8 mean to make an issue out of this attendance. I think
9 we have done pretty well in terms of this commission,
10 servicing it and being on time and being prepared, and
11 I want to thank everyone and particularly our last
12 commission chairperson. It's just that when you see
13 one slot that nobody's ever sitting behind, I think
14 it's an important slot to fill for the commission.

15 Let's move on to talk about our goals for
16 2004. And my primary -- one thing I just want to throw
17 out on the table is, you know, the policy commission is
18 here and has been put in place by the legislature to
19 actually work with the agency and the regulated
20 community on new policies. And I would really hope
21 that as we move forward in cooperation with the agency

22 that we are given the opportunity to fill that mandate.

23 And there has been some discussion in the past
24 that policies moved forward and we're not the last to
25 know but we are not part of that process. And I just

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1 hope that as we move into 2004 that we can be a very
2 important part of that process and that we can provide
3 an opportunity for the regulated community and the
4 public to really weigh in on these policies before they
5 are implemented. And that is one of my primary goals.

6 I think the other primary goal we have, if
7 it's not already going to be addressed in legislation,
8 is a real analysis of retirement of eligibility, of the
9 State Assurance Fund, and potentially retirement of the
10 State Assurance Fund itself. And I know that the
11 financial subcommittee is working on that issue, but I
12 think it's got to be a priority for this commission in
13 the year 2004.

14 And going with that is, if the SAF eligibility
15 is retired, then are the necessary mechanisms in place
16 to support the owners and operators, such as the
17 insurance mechanisms, if there is a need for an
18 additional financial mechanism to support those owners
19 and operators who have a financial need because they
20 cannot qualify for insurance or they cannot pay for
21 insurance, I'd like to see that issue addressed also as

22 we move forward.

23 Any other goals that you all would like to
24 discuss that you think are priorities for the
25 commission in 2004? Mr. Smith, you're nodding.

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1 MR. SMITH: Well, I'm in agreement. I think
2 those are two important goals and they are in our
3 mandates from the original creation of the policy
4 commission and it's in statute.

5 CHAIRPERSON CLEMENT: Mr. Gill.

6 MR. GILL: Another issue that goes with the
7 retirement eligibility was how do we handle the new
8 regulated substances and if another MTBE comes on the
9 scene, how is that going to be handled in the future?

10 CHAIRPERSON CLEMENT: So just to be clear,
11 your issue is if new additives are added to petroleum
12 products that becomes commonplace in the market, how
13 will they be addressed from a regulatory standpoint?
14 Is that it?

15 MR. GILL: Yes. That's always raised when
16 we're talking -- when SAF is brought up.

17 CHAIRPERSON CLEMENT: Ms. Foster had some
18 information regarding the retirement of MTBE as an
19 additive and shared with us at the break. And maybe
20 you could share that.

21 MS. FOSTER: On January 26 a release was made

22 by EPA that states that ethanol will be required in
23 wintertime fuels but minimum oxygen content will no
24 longer be required to summertime fuels which
25 facilitates the phase-out of MTBE for summer usage, but

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1 there still is some concern that MTBE may still be used
2 in winter fuels or winter-blend fuels.

3 CHAIRPERSON CLEMENT: Are there any other
4 priorities or goals that the commission would like us
5 to consider in 2004? Mr. Smith.

6 MR. SMITH: I think we need to work closely
7 and in great cooperation with the agency to get the new
8 SAF rule that has been opened on good track and keep it
9 on good track so we can get it through the process in a
10 quick manner.

11 CHAIRPERSON CLEMENT: And I think the only
12 other agenda or goal that I would add is the continued
13 good work of the technical subcommittee and the
14 financial subcommittee that works out the details of
15 these issues and then brings them back towards the
16 policy commission. And I'm very pleased with the
17 interaction that the subcommittees have had with the
18 regulated community and the agency. We have made some
19 real progress. If there is no other comments -- we'll
20 get to the call to the public here.

21 MS. DAVIS: Madam Chair, I just want to be a

22 bit of a strategist too. And on the issues that are
23 raised on eligibility phase-out and making sure that
24 owners and operators, that this commission explores the
25 insurance options for owners and operators. I think we

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1 need to start that now because the legislative session
2 will go on and on but it will happen fast and furious
3 along. So I just think to be effective, we want to
4 talk about what is it that we would like at our next
5 meeting about that, what are the steps that we want to
6 take to address that?

7 Because I think if we come back in February
8 and talk about what we want, then it's March. And it
9 would be good for us to have a sense of whether the
10 policy commission has any philosophy around the
11 phase-out or the eligibility phase-out. You know, I
12 don't have the answers to my own questions, but I'm
13 sort of tossing them out, that we start thinking and
14 strategizing about that right away.

15 CHAIRPERSON CLEMENT: Ms. Martincic, you've
16 been leading the insurance effort and now you're
17 chairperson of the financial subcommittee. Can you
18 help us?

19 MS. MARTINCIC: Mike chaired the committee
20 also before we started the process of identifying
21 issues that we had needed to be analyzed and

22 researched, so I have that list and I think we can
23 continue to work off that. I mean, I have stressed
24 continually for the past five months that, you know,
25 it's an issue of importance. And I think that -- I

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1 don't think it's something you rush into. I'd like to
2 look at the other states that have phased out and look
3 at the implications of the phase-out in those states
4 and obviously do our best to get that kind of
5 information at the meetings.

6 CHAIRPERSON CLEMENT: Is it possible at this
7 point to take Ms. Davis's suggestions? Could we put
8 some time line together that gives us a sense of, by
9 this date we want to accomplish this regarding
10 insurance? You're probably not prepared to do that
11 today.

12 MS. MARTINCIC: I just got the meeting
13 scheduled for February 24th. I'd be glad to do that.
14 It depends on how often everyone's willing to meet. I
15 mean, if you're talking about trying to come up with a
16 decision before the end of the legislative session,
17 you're talking two months maybe, two and a half months.

18 And realistically, you know, we can do our
19 best. I don't know if that's going to be giving the
20 issue the fair shake that it deserves, in my opinion,
21 but we'll do our best

22 MR. O'HARA: Is there anticipation that
23 phase-out may be an issue in the legislative session?

24 CHAIRPERSON CLEMENT: It's my understanding,
25 there's no piece of work I have read, this is hearsay,

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1 but the primacy of SAF is being linked to a phase-out
2 of eligibility date by the representative involved with
3 drafting the legislation. And so, you know, we may be
4 completely pre-empted at this point but -- and Mr. --
5 I'm sorry, but I would like a like clarification from
6 Fred Merrill in the back.

7 MR. MERRILL: Madam Chair, in regard to the
8 eligibility phase-out unbeknownst to me and the folks I
9 represent, there's has been kind of a second front
10 opened up for lobbying where some of the legislators
11 had been approached in regard to some issues of which
12 the eligibility phase-out became an important topic to
13 one of the members of the legislative leadership. And
14 I don't know if that is going to be included.

15 So what Ms. Davis said, yes, it would be
16 important if that thing happened legislatively for this
17 commission to have its ducks in a line to where maybe
18 we can could support or give some information or input
19 to the legislature. But that was definitely talked
20 about.

21 CHAIRPERSON CLEMENT: So we're on a pretty

22 short time frame based on what we understand the
23 legislative process is right now, recognizing it's
24 going to -- if anybody's followed legislation, it goes
25 up and down, but we have kind of a choice of really

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1 pushing ourselves to come up with some type of a
2 consensus opinion out of the commission or, frankly,
3 not having that consensus opinion and the legislature
4 basically moving forward without us, I think.

5 And I don't have a good analysis of how long
6 that's going to take us to develop a consensus but it
7 is a very, very critical item. And if we could at the
8 February subcommittee meeting work on putting together
9 a schedule of review and then perhaps an aggressive
10 agenda and scheduling process from there.

11 And then as many committee members that can
12 participate in this next financial subcommittee that
13 can, I'd encourage everyone to be there if they
14 possibly can because this is where the real work gets
15 done regarding the details.

16 If there are things that are necessary to be
17 prepared in anticipation of the February 24th committee
18 meeting by DEQ, we need to let them know as quickly as
19 possible. And again, perhaps, Andrea, you could think
20 through that and be prepared for that.

21 Any other discussion on this? And again, I

22 apologize. I'm going to move this discussion of agenda
23 items for next commission meeting to basically the last
24 point and then let's go to the general call to public
25 now because some of the general call to public may

0067

1 actually influence our agenda items.

2 And the first speaker slip that I received was
3 from Mr. Brian Beck regarding agenda items 3-A and 3-C.
4 Mr. Beck.

5 MR. BECK: I want to modify that. Speaker
6 slips were originated in 2003 with Mr. O'Hara and it
7 was to basically allow the public to make comments on
8 those specific items when they came up. If you look
9 back at the policy commission meetings in February and
10 March and the vote that was taken back in March, you'll
11 see that when these are given up to the chairman, they
12 are supposed to recognize them at the time so there's
13 not disjointed discussion on those particular points.

14 Let's go back to the SAF. We have actually
15 found a number of new things. There's a new copay
16 determination being done by the ASAF. They are
17 basically doing audits right now. We are actually
18 being kind of surprised by what's coming out.

19 We are now making formal requests to the
20 agency to show proof of these new copay determinations.
21 On one particular site we had four supposed formal

22 audits on review of copay. And this is another one
23 that we're getting right now, and payments are being
24 held up until they complete these copays. We just want
25 to get those things taken care of. The other thing too

0068

1 on the SAF, actually on the copay issue, it would be
2 nice if the responsible party is notified in writing
3 what the anticipated copay outstanding may or may not
4 be because on the determination letters that we're
5 getting at the present time, it doesn't tell us what
6 the outstanding copay amount is. It just simply says
7 we're not being allowed our entire reimbursement. It
8 doesn't say actually how much is outstanding on that
9 particular release.

10 Materials filed with the SAF. Starting a year
11 and a half ago, ADEQ said that they were going to keep,
12 basically, a reference file on each individual so we
13 wouldn't have to keep refiling materials each time.

14 Recently we're now finding that things that
15 have been submitted to the agency like powers of
16 attorney and other materials aren't being kept as a
17 ready reference, that they are basically being lost, we
18 don't know where the reference files are.

19 The other thing too is we are continually
20 being required by the agency on ADEQ-issued documents

21 to recreate them with applications such as copies of
22 the ADEQ volunteer letters when it says on their own
23 preapproval letters that this person is a volunteer.
24 We have to submit copies of preapproval letters, powers
25 of attorney, and UST approval letters for -- on

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1 whatever report was issued.

2 So again, on an application that we just filed
3 a couple weeks ago, we had 15 pages of ADEQ
4 documentation issued to us that we had to resubmit to
5 the agency that should be a stand-alone documentation
6 and available to the agency. I think it's kind of
7 ridiculous that we have to resubmit documentation
8 issued by the agency.

9 Getting to the C-1. Under the UST volunteer
10 determination, you'll see that a number of them have
11 not been approved for a substantial period of time. We
12 have actually gone back in and asked the agency what
13 the status is of a determination, and we have found on
14 four separate occasions the agency has stated that they
15 have lost the paperwork. And now we are being required
16 to go back and reissue all the paperwork.

17 So on the UST volunteers, we'd like to know
18 why these are not being processed, why files are being
19 lost, and why are the materials that are being
20 submitted under attorneys most of the time, that we

21 have to resubmit those things because they are
22 supposedly being lost? What has happened within the
23 agency? Right now that's sufficient.

24 CHAIRPERSON CLEMENT: Thank you, Mr. Beck.

25 Just for clarification, in terms of public comment, we

0070

1 have two processes that are basically managed by the
2 chair. And one is that we can have speaker slips for
3 each agenda item. And, frankly, I sort of lost track
4 of that.

5 And we also have an open call to public
6 comment. And depending on how the meeting is going and
7 what our time frame is, I would encourage, again, it's
8 my responsibility to do that, that we do discuss public
9 comment after each agenda item because it is easier to
10 keep track of things that way and have the agency be
11 responsive and the commission be responsive. And I
12 will attempt to do that, given the time constraints we
13 have available in the future.

14 But I do have as chairperson also the
15 opportunity to hold all comments until the end of the
16 meeting. Item six, Mr. Fred Merrill, you had a comment
17 on that.

18 MR. MERRILL: I think that I covered that,
19 Madam Chair, unless anyone has any questions.

20 CHAIRPERSON CLEMENT: Mr. Jeff Trembly, you

21 also have a speaker slip.

22 MR. TREMBLY: Yes. Just a quick comment. Ms.
23 Navarrete mentioned that they were, like, having to
24 input these work sheets that are submitted by claimants
25 in the SAF process. And since we all process them

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1 electronically, I'm just wondering if there's a way
2 that we could submit that work sheet to you
3 electronically rather than having someone sit there and
4 retype the whole spread sheet.

5 And the way I was thinking of that is right
6 now you have Crystal, and I don't recall her last name,
7 is sending us an e-mail that says, you know, you have
8 this application number of this many dollars, and I
9 could easily attach that spread sheet and reply and
10 send it back to her if that would help your processing.

11 MS. NAVARRETE: That would be great if we
12 could. Let me see. I don't know if our system will
13 take that.

14 CHAIRPERSON CLEMENT: And just for
15 clarification, Judy, you'll report out next time how
16 the applicants can assist you in their submittals. And
17 one of the opportunities is something Mr. -- something
18 that Mr. Trembly brought up because I think that'll
19 address lost pages and other things also. And, you

20 know, tell us how we can best support you.

21 Are there any other comments from the public?

22 Mr. Kelly.

23 MR. KELLY: Dan Kelly is my name. I had one
24 request and one comment. Simple one would be the
25 requests. Could we get from you the list of meeting

0072

1 dates and times and places? Usually we get that at the
2 beginning of every calendar year. We hop back and
3 forth between a couple of three buildings here.

4 The comment would be to pass along an
5 experience that I had down at the legislature in the
6 last couple of days, going back to your issue about
7 eligibility phase-out and Ms. Davis's comment that, you
8 know, we need to be prepared for the legislative
9 session. And I am amazed at how much life this issue
10 of eligibility phase-out has taken on its own down at
11 the legislature. And there are the most senior members
12 of both houses who are looking at this issue who never
13 looked at UST issues before.

14 And in discussions I had yesterday, they
15 weren't talking about if. They were talking about when
16 and the "when" being next year, two years from now or
17 three years from now. I'm raising -- providing this
18 comment because I think we could get blind-sided as a
19 community. We're going to be in a budget crunch this

20 year. That what it's all going to be about is money
21 year. And this is a money thing. And you have -- on
22 this issue, it gets tracked from both sides.

23 You have the most fiscally conservative
24 republicans who view this as a totally unmandated
25 government welfare check, and then you have the more

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1 liberal democrats who are viewing it as the same thing.
2 So we're going to be squeezed on both sides. The
3 agency understands the issues of coming with an
4 immediate phase-out. The regulated community
5 understands.

6 I really think we need to get our ducks in a
7 row on this. And if we wait until February 24th to
8 start doing that, I think we may miss the boat. We may
9 not have our -- we need to go with a unified front to
10 these people because they have very real -- the way it
11 was expressed to me was, they have had 15 years to deal
12 with this. What does it matter at this point?

13 And that's a tough one to counter, to be
14 honest with you. I was kind of on the hot seat when
15 that was put to me in that way. So that's just some
16 FYI. The most senior people are looking at this and
17 these are people that never looked at UST money before.
18 And now they are very closely looking at this issue.
19 That's all I have to say on that.

20 MS. MARTINCIC: I can meet whenever. It was a
21 factor of when there was availability.

22 MR. O'HARA: Do you think, though, if we move
23 it up that we would have a unified front before
24 February?

25 MS. MARTINCIC: That's the question. That's

0074

1 the million-dollar question. Isn't it? If we want to
2 have an earlier meeting to find out, that's fine.

3 MR. KELLY: Madam Chair?

4 CHAIRPERSON CLEMENT: Mr. Kelly?

5 MR. KELLY: This is the exact discussion I was
6 having yesterday down there, and the bottom line comes
7 down to, in my mind, and this is why we need to have
8 the -- we're consultants looking on the outside
9 interacting with insurance companies. We're not
10 owner-operators. As we see it, this is the 800-pound
11 gorilla in the closet. We need to have owner-operators
12 sitting at the table.

13 When you look at the numbers that Ron gave us
14 here today, at least half of the universe of
15 underground storage tanks that are in the ground will
16 not get third-party insurance if we go to a -- we
17 eliminate SAF eligibility. That's coming from AIG
18 whose saying, we don't insure steel tanks. We're not
19 going to be insuring steel tanks in 2004.

20 Again, that's what they are telling us in
21 private conversations. They are not going to reveal
22 this information in any public forum. This is the
23 problem is that you're asking insurance companies to
24 divulge the most precious asset they have which are
25 their actuarial studies and their actuarial numbers.

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1 They are not going to divulge that. That's the problem
2 we're running into.

3 CHAIRPERSON CLEMENT: Thank you, Mr. Kelly.
4 It would be my suggestion that we try to put that
5 financial subcommittee meeting, place that date before
6 February 4th, if you can, because this is going to be
7 out of the barn and we're not going to be able to
8 really have a response.

9 MS. MARTINCIC: It'll be interesting to see
10 what our response is, because in the round table
11 process there was no consensus.

12 CHAIRPERSON CLEMENT: And then we'll get a
13 notice out just as soon as we've got a scheduled date
14 and time. And again, if we can, encourage everyone,
15 particularly the folks that are going to be most
16 directly affected by this, the non-self-insured owners
17 and operators are going to be the ones most affected by
18 this and the legislated community needs to be vocal and
19 needs to be --

20 MS. MARTINCIC: I think that we have been
21 vocal for the past five months on this issue, and we
22 will continue to reiterate the same issue over and over
23 again. And apparently the consensus that I thought was
24 reached was not reached, so --

25 CHAIRPERSON CLEMENT: Okay.

0076

1 MS. DAVIS: Just one point of communication
2 for everyone here. I really encourage you to go to our
3 new web site. Check it out. Dan, you can -- all of
4 our meetings are listed there.

5 The other tool which is just fabulous for
6 everyone is you can sign up on a list serve and you can
7 be notified of certain kinds of things.

8 And, Al, I want you to make sure, if you
9 would, that the UST community can sign up on a list
10 serve to get notification of technical, financial
11 subcommittee and that these -- and if it's not, would
12 you work with our communication shop to make sure that
13 there is a list serve that gets established for the UST
14 community because that'll be great. And when public
15 notices or meetings go out, they can just go through
16 that way. But right now all your meetings and
17 locations are on there, Dan.

18 MR. JOHNSON: One thing about our new web site
19 too, if you notice on the top of the home page, there

20 will be "subscribe." There will be an opportunity for
21 you to hit subscribe, and that can sign you up to
22 basically be notified of not just UST meetings but many
23 of the other things that are going on in the
24 department. So you may want to check that out.

25 CHAIRPERSON CLEMENT: And then regarding the

0077

1 other points that Mr. Kelly made, our future meeting
2 dates and locations. We'll work with the agency on
3 getting that out as soon as possible so that people
4 have that information coming forward. It'll all be
5 generally the same program or schedule we have followed
6 before, a certain week of the month and a certain day
7 of the week. But we'll have specific dates down for
8 you.

9 MR. JOHNSON: We have already done that.

10 CHAIRPERSON CLEMENT: Could you make that
11 physically -- give us physical copies or e-mail us
12 physical copies?

13 MR. JOHNSON: You bet.

14 CHAIRPERSON CLEMENT: And then also before I
15 get to Mr. Merrill again, because this financial
16 subcommittee meeting is such an important meeting for
17 us, I have also asked Mr. Gill to send out to his
18 distribution list, which is a different distribution

19 list, it's mainly consultants, but anyone who has a UST
20 distribution list, once we have this meeting date and
21 time, if you'd send it out to your constituents.

22 MR. GILL: I'll put it in the email. They are
23 working on it.

24 CHAIRPERSON CLEMENT: Mr. Merrill, you had one
25 final comment, I believe?

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1 MR. MERRILL: Yes. In regard to the
2 possibility of legislation for eligibility phase-out,
3 what I would like to do is notify those legislators
4 whom I know this is their hot button right now that the
5 financial subcommittee is going to be meeting on an
6 expedited basis to discuss that very topic. And it may
7 give them a sense that there may be a solution or
8 recommendation coming out of the commission.

9 CHAIRPERSON CLEMENT: Thank you. I think our
10 next-to-last agenda item is the agenda items for next
11 committee meeting. And obviously the phase-out and the
12 report out of the financial subcommittee, the reports
13 out of the technical subcommittee. Are there other
14 agenda items people want to identify at this point in
15 time?

16 Certainly what I commit to doing, which we
17 frankly didn't get on top of this time is getting a
18 draft agenda to the commission members a little sooner

19 than this last time so you have a decent period of time
20 to review it and to add any other agenda items that you
21 have.

22 MR. O'HARA: Madam Chair, and you'll probably
23 want an update of the legislation.

24 CHAIRPERSON CLEMENT: I'm going to recognize
25 Mr. Beck even though it's out of turn, as a courtesy.

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1 MR. BECK: This is actually going back to your
2 agenda item. Over this last year 2003, ADEQ has
3 actually asked for information out of the policy
4 commission of various stake holders where there would
5 be a return of information by the agency where they
6 followed up on it.

7 And none of that has occurred. I think the
8 agency should, as an agenda item for the policy
9 commission, actually respond to those items that were
10 brought forth in 2003. If they are not familiar with
11 that, I will present it in my annual letter of things
12 that have been missed or not done by the policy
13 commission in the next meeting.

14 CHAIRPERSON CLEMENT: Thank you, Mr. Beck.

15 Unless there are any other items that need to
16 be addressed, we are now ready to adjourn the January
17 28, 2004 UST Policy Commission.

18 Thank you everyone.

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C E R T I F I C A T E

10 I HEREBY CERTIFY that the proceedings
11 had upon the foregoing hearing are contained in the
12 shorthand record made by me thereof and that the
13 foregoing 78 pages constitute a full true and correct
14 transcript of said shorthand record all done to the
15 best of my skill and ability

16 DATED at Phoenix, Arizona this 19th day
17 of February, 2004.

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Clark L. Edwards
Certified Court Reporter
Certificate No. 50425