

0001

1

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

2

3

MEETING OF THE

4

UNDERGROUND STORAGE TANK POLICY COMMISSION

5

6

7

Phoenix, Arizona

8

April 26, 2004

9

9:15 a.m.

10

11

Location: Arizona Department of

12

Environmental Quality

13

Conference Room 250

14

1110 West Washington

15

Phoenix, Arizona

16

17

18

19

20 Reported by:

21

Clark L. Edwards

22

Certified Court Reporter

Certificate No. 50425

23

Worsley Reporting, Inc.

24

Certified Court Reporters

800 North 4th Street

Phoenix, Arizona 85004

25

(602) 258-2310

0002

1 COMMITTEE MEMBERS PRESENT:

2 Gail Clement, Chairperson

3 Hal Gill, Vice Chairperson

4 Roger Beal

5 Theresa Foster

6 Michael O'Hara

7 Tamara Huddleston

8 Andrea Martincic

9 Bob Rocha

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0003

1

P R O C E E D I N G S

2

3

4

5

6

CHAIRPERSON CLEMENT: Good morning. Welcome to the April 28 UST Policy Commission meeting. Before we get started, I just had a couple procedural things I wanted to talk about.

7

8

9

10

11

12

Number one, this room has really, really poor acoustics. So it's very difficult for both the court reporter and the people in the back to hear us. So if you can't hear us, please let us know. We want everybody to hear what's going on and to be able to participate. We also want a really good record of these meetings.

13

14

15

So I'd ask the court reporter to let us know if he's having a difficulty hearing us or if we're speaking too quickly or using acronyms he can't follow.

16

17

18

19

20

Secondly, we're now in a quorum. We do have some pretty important issues today. So I apologize for getting the meeting started a little late, but we did want a ADEQ representative on the Commission before we started. Thank you, Bob.

21

22

23

24

25

Okay. Roll call. Let's start with Roger, please.

MR. BEAL: Roger Beal.

MS. HUDDLESTON: Tamara Huddleston.

MR. O'HARA: Michael O'Hara.

MR. GILL: Hal Gill.

0004

1 CHAIRPERSON CLEMENT: Gail Clement.

2 MS. MARTINCIC: Andrea Martincic.

3 MR. ROCHA: Bob Rocha.

4 MS. FOSTER: Theresa Foster.

5 CHAIRPERSON CLEMENT: Okay. And we'll go into the  
6 first agenda item which is the Financial Subcommittee  
7 Update. And Andrea's going to provide us that.

8 MS. MARTINCIC: I don't have much of an update to  
9 provide. We had a brief meeting just to kind of give an  
10 overview of legislation. And all that's obviously changed  
11 since that last meeting, so it would be sort of pointless  
12 to go through the nitty-gritty of what we talked about.

13 We did have a member of -- I believe it was  
14 someone from the AG's office that came to the meeting and  
15 brought up a concern about ASTs and money being available  
16 for ASTs. And we pointed out that they are not regulated  
17 under the UST program. And so I think that was cleared up,  
18 I hope.

19 But we -- you know, that was something that was  
20 kind of different out of what we normally talked about. So  
21 other than that, like I said, we just sort of were talking  
22 about the UST issues.

23 And another issue that was brought up again was  
24 the concern about insurance and that there, you know,  
25 wasn't much being done to address that issue that we had

0005

1 hashed out a few months ago.

2           And everybody agreed that it could potentially be  
3 a problem. But I guess until it becomes a big enough  
4 problem that we hear from more folks, there's not a lot to  
5 do right now on it.

6           CHAIRPERSON CLEMENT: Could you give us a status  
7 report? And I would invite anyone else on the Commission  
8 that's involved on the UST legislation and where we are  
9 with that right now.

10           MS. MARTINCIC: I don't know if I'm the best  
11 person to give an update on it because I have been out of  
12 town over the weekend.

13           Last I knew, we were addressing some rule concerns  
14 that had been brought up with the bill, and it had more to  
15 do with -- it sounded to me, in sitting in the meeting, it  
16 had more to do with the municipal tank closure program,  
17 kind of, because they were actually talking about pulling  
18 tanks that aren't leaking in rural areas which is, my  
19 understanding, that's another program.

20           But there were a lot of concerns raised by the  
21 rural communities about concerns that the current bill was  
22 going to somehow prevent them from being able to pull out  
23 tanks in their communities to redevelop, and that sort of  
24 thing. So as far as I know, we were -- you know, the  
25 legislative process, they were trying to kind of address

0006

1 some of those concerns.

2 CHAIRPERSON CLEMENT: Just a very pointed  
3 question. It appears that some of the key issues that I  
4 think we had consensus on at one point in time with the  
5 Agency and with the Commission members might be getting  
6 lost. And is there a more effective way that we as a  
7 Commission should be participating in this process? And I  
8 would certainly be willing to try to be constructive if  
9 that would be helpful.

10 And I just thought we should talk about this a  
11 little bit because this is a really important role that we  
12 play. And we are experts in this area and we represent a  
13 lot of variety of interests. And I think it's important  
14 that our positions be more vocal, perhaps, and hopefully  
15 influence this thing moving forward in a more constructive  
16 way. So I just open that up for discussion a little bit.

17 MS. MARTINCIC: Well, I mean, from my perspective,  
18 I think the whole primary purpose of trying to pass  
19 legislation this year was to correct the SAF primacy  
20 problem, and the fact that certain owner-operators were not  
21 able to access the fund, while those that self-insure  
22 could. And in order for that to be addressed, though, it  
23 had to be tacked in with an eligibility cutoff date and the  
24 tax going away from a legislative perspective.

25 And then when the Agency began to get involved

0007

1 with that, their concerns were, if the tax is going away,  
2 how are they going to pay for their program, obviously?

3 And so then they came forth with some cost-cutting  
4 measures or cost reductions -- I don't know how they want  
5 to term it -- but some things, some changes to make to the  
6 program to hopefully help save money which were geared  
7 primarily at the volunteer community which created a lot  
8 of, you know, conflict there.

9 And so, you know, unfortunately I do feel that the  
10 SAF primacy issue has kind of been misinterpreted and it  
11 has lost sight a little bit about that. And there's a lot  
12 of confusion down at the legislature over that issue a  
13 little bit too. So --

14 MR. GILL: Well, I think we need to have more  
15 input. And I haven't been following the legislation real  
16 closely. I just keep getting updates from different  
17 individuals as it changes.

18 And so far I think it's a disaster. And we  
19 basically had no input at all other than our first  
20 recommendation which now appears to be flip-flopping again  
21 on the primacy issue. So I think we need to figure out  
22 some way to get some more input.

23 And as you mentioned, Gail, we're experts in this.  
24 That's why we're on the Commission because we have certain  
25 expertise in our areas. And it's pretty obvious to me that

0008

1 the legislature could use some expertise in what they are  
2 drafting because it appears to be missing. So I  
3 wholeheartedly agree and I would support, you know, your  
4 being, you know, allowed to go down there and do whatever  
5 you can do to get our issues across.

6 CHAIRPERSON CLEMENT: Roger, do you have some  
7 viewpoints here?

8 MR. BEAL: Well, it was disappointing to see that  
9 our recommendations were largely ignored after the effort  
10 and considerations that were put into making them, taking  
11 without -- I mean, it just went away, to see it negotiated  
12 because somebody felt it time was time for the funding to  
13 go away without having a basis other than it's tax money  
14 that probably shouldn't be collected in their view without  
15 understanding the scope of the problem, and, you know,  
16 being facetious about it, and I'm glad to know that the  
17 program will end in 2009 and I won't have an issue.

18 You know, because there's no money doesn't mean  
19 that my site will be clean but it might just as well. No  
20 money to begin with which is why the fund was started, and  
21 there's not going to be any money left over to correct the  
22 problem. And we're starting in a new phase of activities  
23 here, and we have no track record to base the expectations  
24 of closure nor the amount of money that it's going to take  
25 to get there. And so far, you know, I just think that

0009

1 sunsetting the fund itself is premature. Eligibility --  
2 the recommendation the Commission made was right on the  
3 mark, and it was chosen to be ignored. And it's difficult  
4 to accept that.

5           And then other political add-ons got put into it  
6 to where it becomes untenable. The primacy issue was and  
7 is very important to a lot of things in terms of insurance  
8 premiums, effectiveness, availability. I mean, it just  
9 gets ugly if this doesn't happen, and yet they have put on  
10 some stuff that is going to be equally as bad.

11           CHAIRPERSON CLEMENT: I do think it's unfortunate  
12 that the SAF primacy issue has gotten lost because business  
13 cannot function in a climate where there's so much  
14 uncertainty. You have to know what's expected of you and  
15 you have to have a lead time to be able to meet those  
16 expectations. And unfortunately the primacy issue, for  
17 whatever purposes or reasons, was almost a retroactive hit  
18 on those folks that literally don't have the funding to be  
19 able to make up the difference.

20           So I personally feel pretty strongly about that.  
21 And I would be willing to take on a more aggressive or  
22 assertive role in terms of expressing the Commission's  
23 viewpoint. And I would have to be very careful not to  
24 interject beyond what the Commission has approved. But I  
25 would certainly be willing to do that if that was a

0010

1 consensus opinion of something that could be effected by  
2 the group here. You know, I'm open. But I'm very  
3 disappointed that these key issues are getting lost in the  
4 woods. And Arizona business is going to be harmed by it.

5 MR. O'HARA: Should we put a motion on the table  
6 to authorize you to speak on behalf of the Commission in  
7 terms of the recommendations we have already made, just  
8 advocate that position? I'll make that motion.

9 MR. MARTINCIC: I'll second that.

10 CHAIRPERSON CLEMENT: All in --

11 MR. O'HARA: Any more discussion?

12 CHAIRPERSON CLEMENT: Any discussion?

13 (No response)

14 CHAIRPERSON CLEMENT: All in favor?

15 (Positive response)

16 CHAIRPERSON CLEMENT: All opposed?

17 (No response)

18 CHAIRPERSON CLEMENT: All abstaining?

19 (Abstaining: Bob Rocha and Tamara Huddleston)

20 CHAIRPERSON CLEMENT: All abstaining would be  
21 Bob Rocha representing Shannon Davis, and Tamara  
22 Huddleston. Okay. And I'll try to stay on top of this a  
23 little bit and be effective where it's necessary. My  
24 commitment is, I won't take my issues any further than what  
25 the Commission's mandate has been. And, you know, if we

0011

1 can help move this along and hopefully reach a consensus on  
2 the key points and educate the legislature a little bit  
3 more, it would be really helpful.

4 Anything else on the financial subcommittee?

5 MS. MARTINCIC: We did set up a regular meeting  
6 date. Al, do you have our next date?

7 MR. JOHNSON: The first Thursday of the month.

8 MS. MARTINCIC: May 6th. I think we're doing it  
9 at 1:00. Is that correct?

10 MR. JOHNSON: It was 1:00 or 2:00.

11 CHAIRPERSON CLEMENT: You'll get a notice out?

12 MR. JOHNSON: Yes.

13 CHAIRPERSON CLEMENT: And their meetings are at  
14 DEQ?

15 MS. MARTINCIC: Yes. We have just been meeting  
16 here.

17 CHAIRPERSON CLEMENT: Okay. Thank you. I have  
18 been asked to reorganize the next two agenda items and put  
19 Technical Subcommittee Update before ADEQ Update, if that  
20 is okay with ADEQ? Okay.

21 Then we'll go to Financial Subcommittee because  
22 there are some votes and not everybody can be here for the  
23 entire meeting -- or Technical Subcommittee. Excuse me.  
24 And that's Hal Gill.

25 MR. GILL: Okay. We had the Technical

0012

1 Subcommittee meeting two weeks ago. And DEQ provided us  
2 with the consensus language that we had discussed. We made  
3 a few corrections to it and additions, and it was provided  
4 in your packet. And there are seven issues that I wanted  
5 to vote on because I want to get these into the bulletin so  
6 we can get it out to the regulated public and the DEQ  
7 people can look at it as well.

8 I don't know when everybody got their packets. I  
9 think I got mine earlier in the week. So hopefully you had  
10 some time to look at it. But I guess I want to ask Gail  
11 how she wants to go about this. I mean, how much --

12 CHAIRPERSON CLEMENT: Have you all had a chance to  
13 read the draft Guidance language, because this is what we  
14 would hope to be able to approve today, if possible.

15 MR. GILL: I mean, I can try and give brief  
16 updates on the issues if need be. But do we feel that we  
17 can vote on these or do the members present feel that they  
18 need to read them, because I was hoping that they'd have  
19 time to read them and ask questions if there were any. The  
20 only one that we wouldn't be voting on would be -- well,  
21 1.i which was the monitored natural attenuation policies.  
22 And that's already been approved.

23 MR. O'HARA: Is this all consensus, Hal?

24 MR. GILL: Yes. It was all consensus language,  
25 and then we added a little bit at the last meeting. And I

0013

1 have read through all this, and I think that DEQ met all  
2 the suggestions that were presented through the last  
3 several months.

4 CHAIRPERSON CLEMENT: Do you all have questions?  
5 Do you want to take more time with this or are you ready to  
6 roll? Theresa, have you had a chance --

7 MS. FOSTER: No.

8 CHAIRPERSON CLEMENT: Roger, you've read through  
9 it or do you --

10 MR. BEAL: I have looked at it but I haven't  
11 really had time to think about it.

12 CHAIRPERSON CLEMENT: Would you all prefer to have  
13 a little more time on this or would you like to take it  
14 until, you know, the break, or what would you prefer in  
15 terms of --

16 MR. O'HARA: Is there any deadline time frames  
17 that we need to meet?

18 MR. GILL: No, there is no deadline. I just  
19 wanted to get it approved and on the bulletin because it's  
20 been a year and a half since the groundwater study. And  
21 that's where these issues came from. And there is still at  
22 least this many to -- well, actually not. There's a few  
23 more that we're continuing with. This is the bulk of the  
24 issues. But the key thing, as I said, I wanted to get this  
25 language out for regulated and the regulators to have so

0014

1 they can make decisions, you know, in review of documents  
2 so they can make decisions when they are doing the work and  
3 writing the document so we can have less denials and the  
4 work is done more appropriately per the issues that were  
5 raised in the groundwater study.

6 CHAIRPERSON CLEMENT: Are we ready to -- what's  
7 the consensus here? Do we want to take a little more time  
8 or do we want to try to pass this today? I mean, I  
9 participated in the last tech subcommittee and I'm  
10 obviously ready to vote. But, Theresa, I want to give you  
11 the appropriate time you need to look at it, if you need  
12 that time.

13 MS. FOSTER: Roger, do you need more time?

14 MR. BEAL: Actually, I think I can proceed. I've  
15 looked over it. You know, I would have some questions on  
16 Guidance, but there's nothing that's impossible.

17 CHAIRPERSON CLEMENT: You're okay with it?

18 MS. FOSTER: Uh-huh.

19 CHAIRPERSON CLEMENT: Is there a motion?

20 MR. GILL: Do you want to vote on them in bulk  
21 or --

22 CHAIRPERSON CLEMENT: Let's do them all if we can.

23 MR. GILL: All right. I move that we vote on the  
24 consensus language provided by the DEQ and the Technical  
25 Subcommittee attendees responding to the groundwater study

0015

1 issues as listed in this document.

2 MS. MARTINCIC: Second.

3 CHAIRPERSON CLEMENT: All in favor?

4 (Positive response)

5 MS. HUDDLESTON: Question.

6 CHAIRPERSON CLEMENT: Discussion? I'm sorry.

7 MS. HUDDLESTON: Do we need to -- for the record  
8 and maybe for the benefit of the audience, could we take  
9 two minutes to explain what these do?

10 CHAIRPERSON CLEMENT: Go ahead.

11 MR. GILL: I can do that. Okay. 1.a was the  
12 Groundwater Flow Direction Issues. There are two items  
13 under that. I mean, I have no problem doing that. I just  
14 didn't know. No problem at all.

15 The first issue under the Groundwater Flow  
16 Direction Issues is Water Level Monitoring Issues.

17 The main concern there was, in a study done during  
18 the groundwater study issues, a program where ASU went out  
19 and did some measurement of water levels using different  
20 instruments, using different personnel, found that there  
21 was -- could have been quite a range in error depending on  
22 the instrument you used, if you used two different  
23 instruments on the same site, if two different people  
24 measured the water level on a site.

25 And so what is provided here are some bullet items

0016

1 just listing for the regulated public how they can get more  
2 consistent data at a site. And again, this is Guidance.  
3 DEQ is not saying do it this way. It's just some Guidance  
4 saying that, using these steps here, you can get more  
5 consistent groundwater data at a site.

6           The second issue was water head survey issues.  
7 Dealt with whether or not you needed to survey all of the  
8 groundwater wells every time you added a new phase of  
9 groundwater wells. The language basically says that it is  
10 not necessarily a requirement, but you should, if you add a  
11 new round of groundwater wells to a site, at the very  
12 minimum, you should resurvey all the wells that you're  
13 using to determine the gradient direction at your site.

14           Issue 1.b was Aquifer Characteristics, A Tiered  
15 Approach to Calculating Groundwater Velocity and  
16 Contaminant Migration.

17           The issue here was that, of all the 300 to 400  
18 files that were reviewed for the groundwater study by ASU,  
19 I think 8 to 10 had aquifer-velocity testing which is a  
20 slug test or a pump test.

21           And the big issue, one of the big issues in this  
22 discussion was that, if we are indeed going to do monitored  
23 natural attenuation or MNA, you're required to know the  
24 gradient direction, you're required to know what the  
25 velocity of the groundwater is so you can determine whether

0017

1 or not your plume is a risk to a receptor at a certain  
2 distance. But it was also discussed that if a -- whether  
3 or not you can use the literature values rather than a slug  
4 test in certain instances.

5 If a receptor, primarily a production well or an  
6 irrigation well, there's a certain distance from your  
7 plume, do you necessarily have to do a slug test every time  
8 or can you use literature values?

9 And there are a number of site conditions and  
10 hydraulic conductivity options listed here which I think is  
11 a very good presentation of how you look at your site and  
12 using these conditions determine whether or not you need to  
13 do a slug test, an active groundwater velocity  
14 investigation or can you use literature or whether or not  
15 you do not need to worry about it at all.

16 1.c dealt with depth of the wells and that was  
17 determined that it was being addressed in other issues.

18 So 1.d was Soil Sample Analytical Results As An  
19 Indicator That Groundwater Has Not Been Affected By A  
20 Release. This was a discussion, a most key discussion of  
21 all of them, probably, and dealt primarily with whether or  
22 not you have to put in a well at every site because you  
23 cannot necessarily rely on the soil data that you're  
24 collecting as indicative of whether or not your release has  
25 gone to groundwater. And obviously it was a concern, if

0018

1 your contamination only in the soil was documented to only  
2 go 30 to 40 feet and your groundwater was 200 feet, whether  
3 or not you should have to put in a well.

4           And what the primary concern here was is that the  
5 data showed that there was necessarily no correlation  
6 between soil data. For instance, a lot of the soil data in  
7 many sites show very low levels but the site may be a  
8 groundwater site.

9           And there are a number of reasons for this,  
10 primarily of which is that typically when we investigate a  
11 site we cannot put borings where we'd like to because there  
12 may still be an underground tank there or there's a  
13 dispenser there. And so you're drilling at a distance away  
14 from the actual source, and so your concentrations are not  
15 necessarily truly representative of what is right at the  
16 source, but then that site can have a groundwater release.  
17 And so this was the issue.

18           And so, again, there was a number of items listed  
19 here that you should look at and compare your site to as to  
20 whether or not you maybe need to be more concerned about  
21 your site having groundwater contamination and whether or  
22 not you can rely only on your soil data.

23           1.e, Remediation Confirmation Sampling for LUST  
24 Site Closure. This one had to do primarily with two  
25 issues. One was where you -- this goes back to the one

0019

1 that we skipped, the distance from a site for your  
2 groundwater wells, I think. Let me make sure here. No. I  
3 take that back. That's the next one, I believe.

4           1.e deals with a verification of soil and  
5 groundwater results to close a site. And there's some  
6 language and Guidance put in here on where you should take  
7 your -- where you should locate your soil borings for  
8 confirming that a remediation of the soil has occurred.  
9 And then the other one which was the bigger issue was  
10 groundwater sampling.

11           And this was the real issue that was in the  
12 groundwater study, and it dealt with concerns that  
13 inappropriate wells were being used for the confirmation  
14 sampling.

15           And so there's language in here that states that  
16 the wells that you use to verify that the groundwater has  
17 been remediated can either be groundwater monitoring wells.  
18 It can also be remediation wells. But whichever wells you  
19 use for the verification have to -- the groundwater or the  
20 sampling has to be representative of the groundwater, and  
21 basically gives an example.

22           For instance, you do not take your verification  
23 samples out of an air sparge well or out of a well with ORC  
24 which are air socks until a time period have past where you  
25 believe and can prove that the sample you're taking is

0020

1 representative of the aquifer.

2 1.f, Collection of Arizona Department of Water  
3 Resources Data at Distances Greater Than One Half Mile From  
4 The Site, and 1.g, Collection of Contaminant Data at  
5 Distances Greater than 300 Feet from the Source, these are  
6 the two that handled that one that we skipped.

7 Basically we determined that the one-half mile  
8 distance is in literature. It's used everywhere. And so  
9 we agreed that that one could stay, although we stated that  
10 the wells -- and I'm wondering, Joe, if this is a misprint  
11 because it says, "When characterizing a plume, the Release,  
12 Reporting and Corrective Action rule states that wells  
13 should be identified within a minimum of one quarter mile  
14 from the property boundary." Is that what the rules say?

15 MR. DROSENDAHL: I think so, yes.

16 MR. GILL: Okay. However, site-specific  
17 conditions such as the extent of groundwater contamination,  
18 bedrock, or a steep hydraulic gradient may suggest that the  
19 identification of additional wells outside of one-quarter  
20 mile may be warranted." So you could, potentially, go to a  
21 half mile. This one we haven't discussed because, as I  
22 said, we agreed that the literature was consistent that  
23 allowed that.

24 1.g dealt with wells greater than 300 feet from  
25 the source. And the issue in the groundwater study is that

0021

1 there was very little data between, say, 300 feet which is  
2 a requirement by DEQ that your first off-site well or your  
3 first well after your source wells should not be greater  
4 than 300 feet from the source. Many sites then go to 400,  
5 500, 600 feet for your next well. And so the studies show  
6 there's very little data in between.

7           The reason this is an issue again goes back to  
8 MNA. If you are to determine that your plume is stable and  
9 you have a source well and a well 300 or 600 feet away and  
10 you're not near the edge of your plume, you do not know  
11 whether or not your plume is stable or not. So how can you  
12 continue with the first requirement of MNA and that you  
13 have a stable plume?

14           So the language here provides that, again, that  
15 your first well should be no greater than 300 feet, but  
16 there may be instances where you would be -- where you may  
17 have to put wells between 300 and your nondetect well at  
18 whatever distance. Again, this was a difficult one because  
19 the DEQ can't really require that you put certain wells in  
20 because it's all site specific.

21           And our discussion issues were, if you have a well  
22 at 300 feet that has a benzene level of 12 parts per  
23 billion, do you truly need another well or can you look at  
24 that and determine whether or not that's appropriate to  
25 show that it's, you know, near the edge of the plume and

0022

1 would not require another well. And so it is all site  
2 specific, and that's why we didn't really add any more  
3 language than that.

4 1.h, Attenuation of MTBE (Vertical Migration,  
5 Plume Lengths, et cetera). The issue here was that the  
6 investigation, primarily the investigation, not the  
7 remediation but the investigation of the MTBE is much  
8 different than investigation of a BTEX plume. There is  
9 potential for the MTBE to plunge in an aquifer depending on  
10 where it's located.

11 And so there's some bullet points again here that  
12 you need to look at your site, and again these are all  
13 site-specific issues is the reason that they are mostly  
14 difficult. You need to look at your site-specific issues  
15 and determine whether or not, based on some of these bullet  
16 points, you need to do a vertical migration investigation.

17 1.i, that was the MNA, and that one was addressed  
18 in the policy that DEQ put forth and was already voted on.

19 So those were the issues. Any questions on any of  
20 those before we continue?

21 MR. BEAL: Hal, I just had one, and I'm sorry I  
22 wasn't able to attend the meeting, but on the collection of  
23 contaminant sources greater than 300 feet issue, it seemed  
24 in the study that there was a 20-degree cone from the  
25 source of contamination that the wells had to be put into.

0023

1 I found that kind of surprising. That is such a narrow and  
2 important flow direction issue. Am I just not  
3 understanding something here?

4 MR. GILL: Well, I don't remember the --

5 MR. BEAL: One of the parts was the spacing of the  
6 monitoring wells, that the distance needed to be within  
7 that 20-degree angle of dispersion of the contaminant in  
8 order to be effective. So you could go out there 300 feet  
9 and miss that by a few degrees and think you have a clean  
10 site. And that was another finding that's not necessarily  
11 related to that 300 feet other than them placing it.

12 And I didn't see that in there, but it was  
13 certainly an opportunity to miss the plume that was  
14 discovered in the study.

15 MR. GILL: And I understand what you're saying.  
16 And I'm trying to remember, because one of the issues that  
17 we discussed adnauseam was basically where to locate your  
18 downgradient wells. And that was one of the issues that  
19 was raised by the groundwater study, is that many of the  
20 sites that were reviewed did not have groundwater wells  
21 that were directly downgradient. And once again, there's  
22 always many reasons for that in that, many sites, you  
23 cannot put it right where you'd like to.

24 One of them went back to -- and I think number  
25 one, the water global monitoring issues and the well-head

0024

1 surveys, those two were the issues that tried to address  
2 this, is that the very first thing you need to determine  
3 is, what is your true downgradient direction?

4           And that direction can actually change when you  
5 put in the new phase of wells because as you're going from  
6 a smaller survey to a large survey, you're basically  
7 getting more and/or better data.

8           And so the very first thing you need to determine  
9 on your site is, to the best of your knowledge and best of  
10 your ability, what is your true downgradient direction?  
11 Then based on that and based on the investigation you're  
12 taking, the MTBE is a huge issue.

13           If you're truly investigating MTBE, I don't even  
14 think you have 20 degrees because it can be so narrow that  
15 you could miss it very easily. But as you move away from  
16 your source, I think the point that you're making, what the  
17 groundwater study was trying to make, is that as you move  
18 further from your source, it is even more important that  
19 your true downgradient direction is known.

20           So you need to tie a number of these issues  
21 together as far as addressing that point. And so the 300  
22 feet -- and I think the 300 feet issue here dealt more with  
23 whether you are at the edge of your plume or not rather  
24 than with the downgradient direction.

25           The first two, the water level well head survey

0025

1 issue and the water level measurements were more to that  
2 point. And that's the reason -- because that was one of --  
3 two of the reasons that were determined in the study was  
4 that we believe that was why your true downgradient  
5 direction would not necessarily be accurate, that and  
6 specific issues.

7 MR. BEAL: And I don't have a problem with what  
8 you said here, but I do wish that monitoring well issues --  
9 you know, there's a lot of danger to thinking that you have  
10 a clean site because you've missed it, you can't put the  
11 well where you want it to be and, therefore, you're not a  
12 contaminant even if you put it in.

13 You know, even if it's 50 feet to the right of the  
14 plume and it shows up clean, there's a danger there that I  
15 think the study brought out that should be listed in the  
16 Guidance here to be precise in your work because now we  
17 have a basis to understand that you can miss it pretty  
18 easily. But I don't want to change that.

19 CHAIRPERSON CLEMENT: I think that their  
20 assumption was that they had a continuous gradient over  
21 time that was consistent. And having worked in this state  
22 over 20 years now, I don't have a lot of sites that have a  
23 continuing flow direction that are consistent over time on  
24 an annual basis.

25 So the 20-degree dispersion is basically a

0026

1 calculation if your flow direction continues in one  
2 direction over time, and that's just the mechanics of a  
3 contaminant moving through the aquifer and how it will  
4 disperse. It's not really relevant in terms of sites where  
5 you have flow directions that shift over time for a variety  
6 of reasons, you know, where recharge is occurring or where  
7 production of groundwater extraction is occurring is  
8 basically what happened.

9 So I wouldn't want to get stuck with anything  
10 about 20 percent. I mean, I don't think you can just say  
11 that. That's the point about being a professional and  
12 using accurate information to give you that next step out.

13 MR. BEAL: And I don't think I was trying to put  
14 the 20-degree thing in as much as I was trying to say, the  
15 study showed problems with monitoring wells and it's on  
16 point that extra care should be taken. (Inaudible) And  
17 thank you. I apologize for not being at the meeting. I  
18 wished I were.

19 MR. GILL: Well, I think that's why that issue,  
20 and even though it isn't stated -- it actually could be  
21 because I haven't read this in a while -- in 1.a, the two  
22 issues of water level monitoring issues and the well head  
23 survey issues really, if you address these bullet points at  
24 your site, you should have your best shot at getting the  
25 downgradient direction. And from what Gail was saying,

0027

1 that's why I think the well head survey issues is extremely  
2 important, to keep looking at your site and see if you  
3 indeed have some changes, and you may indeed have do  
4 continue the monitoring depending on what's going on.

5 I mean, right now it's a perfect example. With  
6 the drought continuing, you can very well see some changes  
7 in your gradient direction depending on, you know, what  
8 different soil types you encounter as the water table drops  
9 or rises. So you may want to go out and measure your wells  
10 again. But I think these two issues will cover the  
11 gradient direction.

12 CHAIRPERSON CLEMENT: Any other discussion? I  
13 think we're at the point where we had a second on this. Do  
14 we need to restate the motion?

15 MR. GILL: Do we have it recorded?

16 CHAIRPERSON CLEMENT: Well, I know we have it  
17 recorded. All in favor?

18 (Positive response)

19 CHAIRPERSON CLEMENT: All opposed?

20 (No response)

21 CHAIRPERSON CLEMENT: Any abstainers?

22 (No response)

23 CHAIRPERSON CLEMENT: No abstainers. Okay.

24 MR. GILL: And I guess my question is, the next  
25 step is what? This ultimately will go on the bulletin. It

0028

1 will go into the Guidance document.

2 MR. DROSENDAHL: That's correct.

3 MR. GILL: And what is the time frame now because  
4 it's been a while since anything's been put on the  
5 bulletin.

6 MR. DROSENDAHL: I'm not sure. We'll get it up  
7 there as soon as possible. I'm sure it would just take,  
8 you know, hopefully a week or two. Hopefully sooner.

9 MR. GILL: And I'll send out an e-mail to all the  
10 consultants, and if other people can send out emails to  
11 their -- to people they represent to let them know to visit  
12 the DEQ web page and look at the bulletin, and then if they  
13 have any questions to contact me or DEQ or whoever.

14 Okay. The next issue in subcommittee is, I wanted  
15 to ask DEQ the status of their training program. I had  
16 been having a number of calls from consultants and  
17 owner-operators complaining once again about denials and  
18 appeals, and that -- some of them were, to me, totally  
19 amazing.

20 But I think this is a two-fold process which is,  
21 let's get the Guidance out there so the regulators and the  
22 regulated public can see it and but also have training  
23 going on at the same time. So I wanted to ask both I guess  
24 Joe and Judy what the status of the training in their -- of  
25 the technical people in their groups was.

0029

1           MR. DROSENDAHL: This is Joe Drosendahl. I'm the  
2 Acting Section Manager of the Corrective Action Section.  
3 Yes. I forgot what exactly our training plan says. But  
4 no, we're continuing to increase training inside and when,  
5 you know, people come to us from the outside saying, hey,  
6 we have this new technology, we'd like to make a  
7 presentation to DEQ, you know, we set up a time and a place  
8 for that. We have had several of those in the past.

9           If anybody in the future wants to come make a  
10 presentation to DEQ, you know, primarily the UST program,  
11 just let us know and we can set something up. You know, I  
12 agree that the whole idea of increasing communication  
13 between DEQ and the regulated community, you know, that can  
14 only help. So --

15           MS. NAVARRETE: Judy Navarrete, DEQ. The  
16 technical people in the State Assurance Fund have attended  
17 the same seminars as Joe's people in UST, and also we have  
18 a little training session going on every Monday 10:00 to  
19 12:00. We skipped it because it's the last of the month  
20 this week. But we discuss issues, technical issues, and  
21 have training from the air quality division, waste program,  
22 anything that's applicable to these applications.

23           MR. GILL: I get -- the problem that the DEQ and  
24 the stakeholders have had since literally day one is, we  
25 have -- and I have mentioned this numerous times -- we have

0030

1 really good discussions in these meetings and we have good  
2 discussions in the subcommittee meetings, but it still  
3 appears, based on the denials and appeals, that none of  
4 this is getting down to the staff. So it is extremely  
5 frustrating that we appear to see the same types of denials  
6 and --

7 MS. NAVARRETE: What are the denials?

8 MR. GILL: Well, they -- I provided that in the  
9 past and I --

10 MS. NAVARRETE: Hal, I have never gotten a list  
11 from you of --

12 MR. GILL: No. You did about a year ago.

13 MS. NAVARRETE: Could you re-send it?

14 MR. GILL: Well, I'd have to compile it again.

15 MS. NAVARRETE: Well, if you're going to ask me to  
16 correct something, I need to know what it is you want me to  
17 correct or what it is that we can discuss.

18 MR. GILL: Okay. I'll come up with another list  
19 from the consultants.

20 MS. NAVARRETE: I can't take a generalization back  
21 and find out any particulars on it.

22 CHAIRPERSON CLEMENT: Just a follow-up. I think  
23 that's a fair request to know what the specifics are. But,  
24 Judy, when something -- and Joe, when something is agreed  
25 in the technical subcommittee and agreed by DEQ, then do

0031

1 you roll it out to staff after that and you're sure that  
2 that is something that's done, you know, on a routine  
3 basis, basically?

4 MS. NAVARRETE: Every week.

5 CHAIRPERSON CLEMENT: Okay.

6 MR. DROSENDAHL: This is Joe Drosendahl again. As  
7 an example, when the MNA policy was approved, I had a  
8 training session for people to describe what the policy  
9 says. For this current Guidance, you know, I'll set  
10 something up, you know, for the staff to understand what  
11 the new Guidance says and, you know, Judy's people will be  
12 invited there too.

13 And, you know, yes, if the outside has, you know,  
14 specific, you know, topics of, you know, technical, you  
15 know, issues that they would like to -- you know, staff to  
16 become more familiar with, you know, just let us know. Or  
17 if there's any training that the outside world wants DEQ to  
18 put on to help the outside world also, you know, that's an  
19 open invitation too. So just let us know on that too.

20 CHAIRPERSON CLEMENT: Is that fair?

21 MR. GILL: Okay.

22 CHAIRPERSON CLEMENT: Any other discussion on that  
23 item? Anything else on the technical subcommittee?

24 MR. GILL: No. The next meeting is May -- it's  
25 the second Wednesday of the month.

0032

1 CHAIRPERSON CLEMENT: Let me just give you that.

2 MS. MARTINCIC: The 12th.

3 CHAIRPERSON CLEMENT: Yes. And those meetings are  
4 here?

5 MR. GILL: Yes, in the fourth floor conference  
6 room.

7 CHAIRPERSON CLEMENT: At 9:00 a.m.?

8 MR. GILL: Uh-huh.

9 CHAIRPERSON CLEMENT: Everyone is encouraged to  
10 participate. They are very good meetings, I think.

11 The next agenda item, we'll go back to the ADEQ  
12 updates. And thank you for allowing us to move the agenda  
13 around. And the first agenda item is the State Assurance  
14 Fund Monthly Update with Judy Navarrete.

15 MS. NAVARRETE: Judy Navarrete with DEQ. I'm sure  
16 you've all got your updates in your packets.

17 Does anyone have any questions on the applications  
18 received and interim determinations?

19 MR. O'HARA: A quick question, Judy. In terms of  
20 the legislation that's outstanding, I'm not really sure of  
21 the status, but if this insurance, primary insurance issue  
22 is passed, do you anticipate a lot of applications coming  
23 in that were overturned previously?

24 MS. NAVARRETE: Well, that's sort of misleading,  
25 returned applications, because we never returned an

0033

1 application. We have gone ahead and processed every  
2 application that we have received. Even though we had to  
3 deny it on insurance reasons, it has gone through  
4 technical. It has gone through cost. Every application  
5 has been gone through.

6 So if this turns around, those people will  
7 resubmit, but in some cases their attorneys have written  
8 for us to hold them until the legislation is decided. So  
9 there's all kinds of statuses. And I have no idea of the  
10 world out there that's waiting to submit applications.  
11 That I can't answer.

12 MR. O'HARA: Any idea of the number of denials due  
13 to this issue?

14 MS. NAVARRETE: I think, to begin with, there were  
15 about 144 applications that were denied because of various  
16 insurance reasons, but since then a lot of them have been  
17 overturned because of pre-existing conditions or overfills  
18 that insurance doesn't cover, some other things. So the  
19 actual number of applicants that have been denied because  
20 of insurance, less than 40.

21 CHAIRPERSON CLEMENT: Judy, just a question to  
22 follow up. When you say less than 40, is that like  
23 individual applications or is that like a --

24 MS. NAVARRETE: Individual applicants.

25 CHAIRPERSON CLEMENT: Okay. Thank you. And

0034

1 before we -- anything else on 4(a) because I do have a  
2 public comment and I want to get the public comment on the  
3 issue while we're on it. Okay. Brian Beck has an SAF  
4 update public comment.

5 MR. BECK: Brian Beck with Beck Environmental.  
6 The SAF update we find kind of lacking in a couple things.  
7 First of all, if you take a look at their own information,  
8 you see that 47 percent of the stuff that's currently  
9 pending is in appeal. That's a fairly high rate. So we're  
10 still not seeing the appeal rate go down on these  
11 particular things.

12 The other thing too, we did an experiment in  
13 January. There were 11 SAF applications filed, seven  
14 direct pays and four reimbursements. To date we have seen  
15 no determinations on those particular 11 applications filed  
16 since January. All of them, interestingly enough, had ANs  
17 issued for contract information.

18 Now, on direct pay which are supposed to be  
19 preapproval, you shouldn't have to have contract  
20 information filed because that's all part of the  
21 preapproval process. And yet we could not get those things  
22 processed until we went back through, filed an additional  
23 form on the preapproval documentation of a contract. By  
24 definition, a preapproval's supposed to be the contract.

25 Also on the 11th, 10th, there was other contract

0035

1 information on file that DEQ couldn't find. We also had  
2 ANs on all of them saying that there was missing  
3 information. When we went back through it, we only found  
4 one that had a missing invoice. The rest of them had the  
5 information. It was just, for some reason, lost in the  
6 thing. Now, these 11 applications too had third-peer  
7 review by attorneys for completeness on those things.  
8 We're checking on that stuff.

9           Five of the direct pays had ANs requesting  
10 justification for the work performed. Again, preapproval.  
11 And yet we had to go back and rejustify the preapproval  
12 work. All the direct pays have requests for insurance  
13 information in which all of the material was on file  
14 because it had to be filed for the preapproval, but we had  
15 to reissue the information.

16           Four of the direct pays had requests for updated  
17 financials. Again, preapproval. Why do we have to reissue  
18 financial information on a preapproval when we have already  
19 been through that information?

20           Three of the reimbursements that were filed were  
21 filed instead of doing direct pays, and it was exactly per  
22 the preapproval work plan. We wanted to see what would  
23 happen with ADEQ reviewing the exact same work.

24           In fact, it was identified in the reimbursements  
25 that it was following the work plan. We actually copied

0036

1 off sections of the preapproval, and on all three of these  
2 things we had, all work required additional justification  
3 for the work performed and show that it was reasonable and  
4 necessary.

5           And then we had one reimbursement that was done.  
6 The work was done per ADEQ-UST written request. And the  
7 SAF came back and said we were required to show that the  
8 work was needed, that it was approved, and the scope of  
9 work was approved by UST. And those are the current issues  
10 that we're running across right now.

11           Then we had a couple of major technical issues  
12 regarding some hazardous waste definitions. We had two  
13 sites where the soils came up with greater than (inaudible)  
14 benzene which, by definition, is a hazardous material.  
15 Well, let's put it this way. The landfills that it was  
16 taken to refused to accept the high benzene concentration.  
17 They wouldn't take it. They were required to go as  
18 hazardous waste.

19           So even though ADEQ-SAF is calling it PCS, the  
20 landfills would not take it. We had to take it as  
21 hazardous waste because it was rejected. Those are the  
22 issues.

23           CHAIRPERSON CLEMENT: Thank you, Brian. Any other  
24 questions or comments on that agenda item? Judy.

25           MS. NAVARRETE: I would like to address just one

0037

1 comment from Mr. Beck, and that's the percentage of appeals  
2 as to the number of applications that are pertinent right  
3 now.

4 The appeals are a snapshot in time. They are,  
5 like, back from three months, could be four months, five  
6 months. Things drag out. So there is no correlation  
7 between what's inhouse now and the number of appeals.

8 CHAIRPERSON CLEMENT: Does everybody understand  
9 that? I don't. I'm sorry. I totally don't get that.

10 MS. MARTINCIC: I mean, if that's true, then why  
11 do we have this? I mean, I guess it doesn't help us gauge  
12 the process of the appeals.

13 CHAIRPERSON CLEMENT: Can I just follow up with  
14 some questions just to make sure that I'm getting this  
15 because I don't think I am or we're getting it. You have a  
16 certain number of applications in house and you have a  
17 certain number of appeals. Right?

18 So regardless -- and that's a snapshot. That's  
19 today or whatever day you write these out. So are you  
20 saying that -- I believe Brian quoted that 47 percent are  
21 in appeals. Are you saying that if you look at the total  
22 number of appeals inhouse on a certain date versus the  
23 total number of applications, the 47 percent is inaccurate?

24 MS. NAVARRETE: Right.

25 CHAIRPERSON CLEMENT: Okay.

0038

1 MS. NAVARRETE: These have not had determinations  
2 on them yet. They are in house. These are applications  
3 that we are working on. They have not had a determination.  
4 So, therefore, they have not -- they are not in informal  
5 appeal. These are in process.

6 CHAIRPERSON CLEMENT: So there's three categories,  
7 basically. You've got those that have been processed. And  
8 out of those that have been processed, they have either  
9 been approved or they are in some appeals process. And  
10 then you have those that have not been processed,  
11 basically, and that's this number that you're -- okay. Is  
12 that clear to people?

13 MR. GILL: Well, what percentage is in appeal?

14 CHAIRPERSON CLEMENT: Yes. That, then, would be  
15 the next question.

16 MR. GILL: Well, what percentage is in appeal?

17 MS. NAVARRETE: That's just not a number I can get  
18 you. I mean, I guess I could go back and say how many have  
19 we -- how many determinations have we made over the last  
20 four months?

21 MR. GILL: I guess we need to figure out --

22 MS. MARTINCIC: You'd be able to get it. Wouldn't  
23 you? If you're saying -- if you go off the applications  
24 that have been determined, that have a determination, and  
25 use that number to gauge how many of those are in appeal.

0039

1 Right?

2 MS. NAVARRETE: You could maybe get close to it,  
3 but a lot of times people appeal and then they want to turn  
4 in more information so they don't have to come to an appeal  
5 meeting, so they ask for a 60-day extension or a 30-day  
6 extension. We grant it. So we still have to keep them on  
7 the books, but a lot of these we never even have an appeal  
8 meeting. They just furnish the information and it's  
9 cleared up.

10 MS. MARTINCIC: Well, then, can't you --

11 MS. NAVARRETE: A lot of times --

12 MS. MARTINCIC: Is there a code you use for the  
13 applications when they are going to go to appeal so, you  
14 know, if it's not enough information, if it's one of those  
15 types of appeals versus, you know, a more technical appeal  
16 or -- do you understand what I'm asking? Can you break out  
17 those appeals that you feel are going to be resolved once  
18 the other party sends in the missing information versus --

19 MR. O'HARA: Can I just interject before she  
20 answers because I think if we can just take a step back and  
21 ask ourselves in general terms what it is we're trying --  
22 what information we're trying to gather, and then we can --  
23 if we agree that this is an important piece of information,  
24 then maybe we can ask a question the right way because I'm  
25 a little confused too. Do we want to know, out of all the

0040

1 applications that go through house, how many of them get  
2 appealed? An appeal percentage? Is that what we're after?

3 MS. MARTINCIC: I thought that's initially what we  
4 wanted.

5 MR. O'HARA: Because without even getting that,  
6 that number's got to be pretty high, I'm guessing, because  
7 there's lots of appeals and for a variety of reasons. So  
8 what would that information, if we knew that it was high or  
9 low, what would it tell us, because I would guess very few  
10 applications go through completely without some type of  
11 appeal.

12 MS. MARTINCIC: Well, and that's why I remember,  
13 at one of these other meetings, we had asked for a list of  
14 what the denials are and we had a list of those given to  
15 us, and a lot of them were "need more information" or  
16 "incomplete" or "insufficient data" or whatever it was, the  
17 term they used.

18 So but I think originally we had asked for this  
19 information to see if there was a high number of appeals,  
20 and there was sort of a common knowledge that that was the  
21 case, and to get the data to understand why, and then  
22 hopefully to try to work on a solution for it and just  
23 prevent it from continuing that way. But if -- what I'm  
24 hearing is that these are really meaningless, then how are  
25 we ever really going to be able to do it?

0041

1           MR. O'HARA:  It's more of a work flow kind of  
2 thing.  You're just saying the number of appeals you're  
3 currently working on?

4           MS. NAVARRETE:  That was last month.

5           MR. O'HARA:  And you can't draw the conclusion --

6           MS. MARTINCIC:  So if you can't draw a  
7 conclusion --

8           MR. O'HARA:  But you could ask for something like,  
9 go back in time and say, things that are no longer in  
10 house, we're working on, how many were appealed, how many  
11 final determinations or claims, applications ended up being  
12 appealed?  And out of a hundred applications, what  
13 percentage are appealed?  And I'm guessing that number  
14 would be pretty high.

15           MS. NAVARRETE:  The thing is, what are you trying  
16 to find out, because a lot of times when we send out an AN,  
17 we get the response that, "We'll catch it on appeal."  We  
18 have to accept the appeal.  We cannot force consultants to  
19 give us the information.  And they want it to do it on  
20 appeal.  Why?  I don't know.

21           MR. O'HARA:  There's a lot of reasons for appeals.

22           MS. NAVARRETE:  There's a lot of reasons for  
23 appeal and not necessarily because anybody's done anything  
24 wrong on our side or theirs.

25           MS. MARTINCIC:  Well, and I think maybe that's one

0042

1 of the things I was interested in seeing is, based on how  
2 many, you know, appeals you have, how many actually end up  
3 getting worked out in favor of the owner-operator or DEQ  
4 and, you know, is there a simpler way, instead of sending  
5 everything to the appeals process, is there a simpler way  
6 to handle, you know, some of these issues, especially where  
7 it's insufficient data or things like that? And that's  
8 what, I think, originally we talked about trying to look at  
9 solutions for that but --

10 MS. NAVARRETE: Well, I think you can see the  
11 solution is that, you know, for the last month, we had 30  
12 that went to formal. That means all the rest of them were  
13 resolved. And of these, I think we have been to OAH twice.

14 MS. MARTINCIC: But then of those 30, what's the  
15 percentage of that out of -- like, you know, did you have  
16 50 applications and 30 of them went on to formal appeals or  
17 was it 150 and 30 went to formal appeals? I mean, isn't  
18 that --

19 CHAIRPERSON CLEMENT: What's the universe that  
20 that 50 comes from, I think, is --

21 MS. MARTINCIC: Is it the majority? Is it a  
22 minority?

23 MR. GILL: And is it reducing? To me, that's what  
24 we ultimately wanted to see are the appeals going down.

25 MS. NAVARRETE: Hal, I have no control over that

0043

1 in some instances.

2 MR. GILL: Well, when we were looking at, like,  
3 for instance, at the next one on Joe's list where he's  
4 tracking the number of reports, whether it's CAPs or Site  
5 Characterization Reports that are on hold for, in your  
6 case, an AN letter or something like that, that's good  
7 information.

8 But ultimately when all this reporting started  
9 two-plus years ago is, we were complaining that we needed  
10 to get people in place that had the experience to review  
11 all these to where the technical issues, and I understand  
12 that there's problems on both sides, but the technical  
13 issues would not continually be coming forward.

14 And we were told by DEQ that these people were in  
15 place, that we had experienced people in place and  
16 that's -- when this reporting started, we wanted to see,  
17 okay, the applications are coming down, the CAPs are coming  
18 down, the SARs are coming down, the length of time that  
19 it's taking to review them. And ultimately the offshoot of  
20 this would be, there would be less appeals.

21 And if it is tracking the appeals that are all of  
22 a technical nature, you know, maybe that would cut out  
23 the -- I understand what you're saying, that you have no  
24 control over ones that say they want to go to appeal, but  
25 ultimately the total number of appeals should be coming

0044

1 down because supposedly everything is in place to do a  
2 better job on both sides up front.

3 MS. NAVARRETE: We have another problem too. I  
4 have been doing cost this month because we're short the  
5 cost area. And I notice that since we have had quicker  
6 turn-around times in the SAF that people are putting in  
7 applications to get paid for their SCR. Well, the SCR  
8 either has not been submitted or it has not been approved.

9 We can't approve those costs until the SCR -- so  
10 just the quick turn-around time from SAF has caused a lot  
11 of appeals because people have not had -- either turned in  
12 their information, their CAP, or had it approved or  
13 something, and they are asking for the costs before things  
14 get through the system or before they have even submitted  
15 it because they are used to just getting in the queue and  
16 then waiting months and months and months. And that's just  
17 not happening.

18 So a lot of these we just had to deny. And I have  
19 seen that this month. Also -- there are just numerous  
20 reasons, and some things don't conform to the preapproval.  
21 And you cannot turn in a reimbursement application against  
22 a preapproval, a direct pay application. There's just  
23 numerous, numerous reasons.

24 And they are not like -- it's not because the work  
25 was bad. But if you would like me to just track what is

0045

1 actual technical, do you want to know when someone asks to  
2 be paid for an SCR and they either haven't submitted it or  
3 it hasn't been approved? What are technical denials?

4 MR. O'HARA: I think just to -- not even to answer  
5 your question but in general, things like that that you  
6 just mentioned, if you guys track that, why are these  
7 things going to appeal? That's a good reason because they  
8 are submitting applications for reimbursement before the  
9 SCR's even been approved. Those type of issues, if you had  
10 those tracked, it would indicate there's -- one of two  
11 things.

12 There's something you could fix or maybe there's  
13 something that the regulated community could fix. And we  
14 could get something out there, as an example, saying  
15 something like, please don't submit your costs until you  
16 get an approval.

17 We're trying to make your job easier and appeals  
18 go down. If we had that information that you're talking  
19 about, then we could make some judgments on it. I know  
20 it's tough because there's a million different reasons  
21 things go to appeal. Most all of them do. It's a burden  
22 to you as well as the owner-operators.

23 MS. NAVARRETE: Or applications costs.  
24 Application costs are submitted but there is no information  
25 on what is the application that you're submitting these

0046

1 costs on? Nothing. And there's two or three of them on  
2 one application and you've got application costs submitted  
3 for three applications with no backup information on what  
4 applications were these for? I mean, these are very simple  
5 things. And I mean, I'm seeing all of this stuff. And if  
6 you want me to, I'll make a list.

7 CHAIRPERSON CLEMENT: I actually think that would  
8 be helpful.

9 MS. MARTINCIC: It sounds like there needs to be  
10 some communication or some training or something, you know,  
11 on the part of the regulated community. And I don't know  
12 if things change that drastically or people have gotten  
13 used to doing it one way and things are a little different  
14 now. And so -- but it definitely sounds like there's a  
15 disconnect there.

16 I mean, I'd be more than willing to try to  
17 disseminate that information to my members. I mean, I know  
18 I don't represent all owner-operators, but I'd be more than  
19 happy to let folks know, maybe a reminder checklist.

20 I know we talked about this a year ago, coming up  
21 with a very simple one-page bullet point thing, you know,  
22 remember to do this, remember to do that, and have it set  
23 up so it's an actual little checklist that they can check  
24 off as they go through it so that they know before they  
25 send it in that they have done everything that the Agency

0047

1 wants them to do so that it can be processed timely and not  
2 have to go to appeal.

3 I mean, and know it sounds -- it just seems like  
4 it would be a simple way to get at. And if it helps, it  
5 helps. And if it doesn't, I guess we'll be back to discuss  
6 it more, but I'd at least like to feel like I tried to  
7 help.

8 MS. NAVARRETE: I believe there is a checklist  
9 with the application itself. We can take a look at that  
10 and see if we need to update it, maybe just to add, make  
11 sure if you request costs for a report that the report has  
12 been submitted and approved.

13 MR. O'HARA: That could be a dynamic checklist,  
14 that as you see things that are occurring due to some type  
15 of policy change or legislative change, you could add that  
16 item on the checklist.

17 CHAIRPERSON CLEMENT: Ms. Foster.

18 MS. FOSTER: I would be very cautious about asking  
19 DEQ to make this master humungous list of everything that's  
20 being denied. Being an owner-operator and going through a  
21 number of informal appeals lately, I don't want them to use  
22 their time to make this master list so we can have another  
23 notebook on our shelf that says what all the denials are.

24 I'm more interested in -- we have the facts. We  
25 have been given this report for two years. If I remember

0048

1 correctly, all of us should have copies that says, in this  
2 month we had this many informal appeals, this many formal  
3 appeals. We have the information ourselves that we can  
4 track that the number of formal and informal appeals is  
5 going down. And if that's what we need, maybe we just need  
6 that not on a colorful document but just saying, this is  
7 the trend, this is the month, this the last three months.

8           And maybe, what are some of the top three issues  
9 that could be addressed to let the information be sent out  
10 to both DEQ and the owner-operators in our informal  
11 appeals. We're seeing these as the top three issues we  
12 need help with. I do not want them to write up this master  
13 document with all the informal appeals and formal appeals  
14 information. I would much rather them spend their time  
15 rewriting the State Assurance Fund application process than  
16 putting a Band-Aid on the application we have now.

17           MR. O'HARA: Let me just concur with that last  
18 point. But I don't think any of the suggestions, at least  
19 from my perspective, were to make a huge, massive list. I  
20 want, like she mentioned, maybe three or four items that  
21 are causing a majority of the appeals, just a few things  
22 that are causing all these appeals. And if we have those  
23 few items, at least you can notify the owner-operator that,  
24 hey, this is what we're seeing. You're on notice that we  
25 need to have these things on this checklist.

0049

1           CHAIRPERSON CLEMENT:  And rather than give you a  
2  dictation in terms of three or four, what are the top ones  
3  that you can easily see are the ones that are causing you  
4  the greatest difficulty and that's the most consistent,  
5  because what we're trying to do is make this work better  
6  for everyone.  You know, it's not to make work for you.  
7  It's to identify problems that we can help you solve,  
8  hopefully.

9           And my other suggestion would be that we'd like to  
10 see that, but also if you could prepare that in  
11 anticipation of the May 19th all-day seminar that you're  
12 going to have and disseminate as much information in that  
13 forum as possible, I think it would be very helpful.

14           MS. NAVARRETE:  We're already working on that.  
15 Another thing too is, we have improved the database and  
16 done the Attachment II in our letters part of the database,  
17 and so everyone with denials, any technical denials or  
18 anything that needs to be explained is explained in an  
19 Attachment II along with the initial determination letter  
20 or the final determination letter.  So there's a long  
21 explanation of any denial so that they can furnish the  
22 information so that we can get it processed.

23           CHAIRPERSON CLEMENT:  Mr. Beal.

24           MR. BEAL:  Well, I'm just kind of listening, and I  
25 think we have been under the assumption that if the appeals

0050

1 go down that the work has got to be more efficient and  
2 better, and as an indicator, there's fewer appeals to the  
3 work being done. And yet what I'm hearing Judy speak is,  
4 it sounds as if the appeals has become part of the process,  
5 not an indicator of bad work, just an indicator of work  
6 being done almost.

7 That's why the percentage is so high because it's  
8 a normal thing to try this, and if it doesn't work, "we'll  
9 catch it on appeal" is the phrase that she used. So we may  
10 not be able to accomplish an improvement by looking at  
11 these numbers. I mean, it might just be something that  
12 you're finding, that it is a process to appeal it. You  
13 would like it to go through without it but it may be  
14 expected because we don't have information as to how all  
15 the consultants think on this. That might not be the case.

16 MR. GILL: I would like to agree with Theresa  
17 that, can we see these two, the informal and formal appeals  
18 in a graph that just tracks the trend because I understand  
19 that it's a snapshot. But overall, if you see it doing  
20 that, then that's telling us that things, even though it  
21 may not appear on the surface, that things are indeed  
22 getting better.

23 MS. NAVARRETE: Right. Roger's right. A lot of  
24 it, that's work flow. And we can -- certainly would like  
25 to see it go down because we could spend more time

0051

1 processing our -- trying to get our new application out and  
2 some other things that we want to do. I'm trying to make  
3 the process easier for everybody but those costs sealings  
4 are complicated. They are complicated for the consultants.  
5 They are complicated for us. And a lot of times it's  
6 confusing issues with the cost sealings.

7 CHAIRPERSON CLEMENT: But just having that piece  
8 of information, the cost sealings are complicated, that  
9 gives us a target for simplifying the cost sealings. I  
10 hear what Roger said and I hear what you said. But  
11 appeals, we should be trying to do less of them because  
12 even though it's part of the process now, it's time  
13 consuming. It's time consuming for the consultants and  
14 it's time consuming for the Agency.

15 And so if you can identify the things that are  
16 causing you the greatest amount of appeals and there's some  
17 way to address those, you know, those are the things that  
18 we want to have a heads up about. Ms. Foster.

19 MS. FOSTER: There's another thing to think about  
20 too, is that all the easy remediations have been done or  
21 near the end of being done. What we're running into right  
22 now on SAF applications, whether it's preapproval or  
23 reimbursement, are those more technical remediations that  
24 create more problems. And because of that, I would think  
25 your informal and formal appeal rates would go up because

0052

1 we're working on the more difficult ones now than we were  
2 five years ago.

3 CHAIRPERSON CLEMENT: Any other -- I have got two  
4 other public comments. So, any other Commission comments?  
5 Mr. Beck, you had another comment.

6 MR. BECK: Just a real quick. Judy questioned  
7 about the 47 percent, how I arrived at it. I simply took  
8 from their existing sheet the total number of active  
9 applications, which is 123, versus the total number of  
10 appeals added up between the two different sheets here  
11 which appears to be 56. But if you go back to that 123  
12 applications and track the 323 that was accepted for that  
13 particular period of time as reported, that means you have  
14 60 applications that have been in for a while.

15 Well, if you have 60 applications that have been  
16 in for a while and 56 of them are actually in appeal, that  
17 means you only have four out of 60 that were not appealed.

18 If you remove the cost information appeals out of  
19 the technical picture or out of the picture and just look  
20 at the technical, that means that 34 technical appeals were  
21 informal and formal out of 60. That's greater than 50  
22 percent. We have not seen a decrease in these things. We  
23 have been tracking it. And there's actually been an  
24 increase since December in the appeal ratio.

25 CHAIRPERSON CLEMENT: I guess what I think you

0053

1 need to do is set a time period, like an annual basis or a  
2 semiannual basis and say, this is how many applications we  
3 had, I mean, where you can get a snapshot that's a  
4 big-picture snapshot, basically, because from your  
5 explanation, it's my understanding that you can't -- if the  
6 application is in process, it's a different thing than if  
7 it's been approved or been denied. Right? Is that  
8 correct? So then comparing those numbers makes it almost  
9 nonsensical in terms of percentage.

10 MR. ROCHA: Well, let us look at the data and see  
11 how we can improve it rather than take a lot more time at  
12 this point. I hear your concerns. We'll look at it. I  
13 know Judy and I have talked about this several times and I  
14 hear everybody wanting some explanation.

15 And I also feel that, you know, the applications  
16 are coming from the same people. And when they are  
17 returned, people need to read what they get and register:  
18 That doesn't apply so next time I shouldn't do it.

19 It's a two-way street, you know. That's what I  
20 would suggest. Allow us to see if we can improve the  
21 information, how we can improve it whether we take a time  
22 element and just say for this period, this is the activity  
23 that we can best relate.

24 CHAIRPERSON CLEMENT: Okay. I have another public  
25 comment from Mr. Kelly on this issue.

0054

1           So, Dan, if you wouldn't mind coming forward and  
2 speaking for the court reporter.

3           MR. KELLY: Dan Kelly is my name. Thank you. I  
4 would respectfully have to disagree with Mr. Beck's  
5 calculation. My understanding -- and I was helping derive  
6 this. The number appears here. The application cannot be  
7 in appeal yet. These are applications that have not  
8 received an interim determination. Therefore, they can't  
9 be in this universe, either of these last two pages.  
10 Number one.

11           Number two, like many of you, I have been in this  
12 process long enough to know that a 123 is great work, Judy.  
13 Good job. I'm not complaining one bit about that. That is  
14 great. And I'm not complaining one bit about these  
15 appeals. This is a great increase even though I am subject  
16 to many of these appeals.

17           But I think the issue is, as Mike put his finger  
18 on it, if our investigation is to determine definitively  
19 that there's lots of appeals, there's lots of appeals.  
20 There's lots of appeals. It's -- more than half the  
21 applications have some type of appeal. That's not really  
22 going to -- that's not going to help us get to where we  
23 need to go.

24           I think you can do a mass balance analysis and you  
25 can look at this, the six or however many months running

0055

1 total it is and you can do the numbers very quickly on the  
2 back of an envelope. There's about 70 to 75 applications  
3 that come in per month. 75 come in. This last page shows  
4 us that in that same running interval, we have 30 of those  
5 applications that go to formal appeal. Do the math. It  
6 comes in one, in seven applications is going to formal  
7 appeal.

8 Now, that's the issue. No insurance company could  
9 send one to seven of claims that come in the door to appeal  
10 and operate profitably. And I think that's the issue  
11 where, if I'm tracking what Mike's saying we need to go to  
12 is, what is the cost that we're incurring to save the  
13 dollars that we're saving in these appeals on both sides of  
14 the table?

15 And I understand there's a statutory mandate,  
16 fiduciary responsibility -- just stick with me for a minute  
17 and you'll see where I'm going. The big-picture solution  
18 to this, I think, is in the SAF rule writing because, using  
19 your example, Judy, of a typical example of an appeal is  
20 the Site Characterization Report is submitted before the  
21 report is approved.

22 Okay. Here's the catch-22 dichotomy. If I want  
23 you to pay for the Site Characterization Report and I want  
24 you to pay for the Site Characterization costs, the  
25 drilling, the wells, the field work, I have to give you a

0056

1 report of work. Okay? Here's my claim for my Site  
2 Characterization Report and my site characterization field  
3 work. I'm caught as an applicant submitting claims, that I  
4 have to give you that report of work, that I have to  
5 document that.

6           And I don't think that the State wants to incur  
7 the cost of, okay, here's an application for my field work.  
8 Approve all of that. Here's the SCR to support it. Don't  
9 review and approve the SCR cost right now. Wait until  
10 Corrective Action reviews it and approves it. And then I'm  
11 going to give you another SAF claim just for the SCR.  
12 That's a cost we don't need to incur.

13           But we do need to tweak the SAF rules so that you  
14 can get that claim that has the site characterization field  
15 work and the SCR, review the whole thing, say we like the  
16 SCR, when Corrective Action approves it, we'll go ahead and  
17 give you your money. And it doesn't it show up here in  
18 your appeal catalogue and make an appeal load for you.

19           We can tweak this in the SAF rule because Roger's  
20 observation is absolutely correct. The appeal process is  
21 now a part of the process and that's not -- and Theresa's  
22 right. We're working on the worst -- we're only working on  
23 the 25 percent of the worst sites now. They are going to  
24 be contentious. There is going to be a difference of  
25 opinion. So I think the solution is in the SAF rule

0057

1 writing. And we need to find flexibility. This is a very  
2 expensive workload here, folks. These are all lawyers.  
3 This is expensive.

4 MS. HUDDLESTON: Only from your side. The State  
5 pays very little.

6 MR. KELLY: But that's coming out of my pocket  
7 too. That's the point. That's coming out of all of our  
8 pockets too.

9 MR. O'HARA: Quickly wrap up. Just to concur with  
10 most of what he said, and I think the solution he  
11 recommended was correct too in terms of the SAF rule,  
12 making that better. But just to share an experience, I was  
13 in a formal appeal, I think, last week, and I think there  
14 were at least two to three DEQ people all day. Tara was in  
15 there all day, three Attorney Generals, two attorneys on  
16 our side and another consultant.

17 So it was a very -- I just thought about the money  
18 that we were spending doing this, and taking these people  
19 away from their jobs. And that's not putting the blame on  
20 anybody because we were all reasonable people and it was a  
21 reasonable issue and good points on both sides.

22 And it comes down to the rules. They were trying  
23 to fit a square peg into a round hole. We had this square  
24 peg we were trying to get reimbursed for. It doesn't fit  
25 in this process. And going back to the rules, we need to

0058

1 fix this round hole to make it a little larger.

2 CHAIRPERSON CLEMENT: Thank you. I think we have  
3 reached a conclusion here. Just to be clear about the  
4 action item, Bob has committed that the SAF folks will go  
5 back and take a look at how they can best inform regarding  
6 these issues of appeals and how we can get a better handle  
7 on what are the major concerns that you're having relative  
8 to the appeals that you're receiving so the regulated  
9 community can be informed and we can hopefully provide you  
10 some assistance on that.

11 And then secondly, if there's other ways that you  
12 can provide information that will be clear or provide us a  
13 running tally in some form or another in terms of the  
14 informal and form appeals, I believe that's pretty much  
15 where we landed on this. If you've got any other  
16 suggestions for the Commission to help us understand where  
17 we can assist the regulated community, we'd also be  
18 interested in that as you speak internally.

19 MR. GILL: What's the status of the rule writing?

20 MS. NAVARRETE: John Alspach has done as many  
21 updates as he can until we see what the legislation does.

22 CHAIRPERSON CLEMENT: So you basically have a  
23 draft rule?

24 MS. NAVARRETE: No. He's cleaned up what --

25 MR. GILL: The SAF rule or the --

0059

1 MS. NAVARRETE: You asked me about the rule?

2 MR. GILL: The SAF rule is what you're talking  
3 about?

4 MS. NAVARRETE: Uh-huh.

5 MR. GILL: And where are the cost sealings? My  
6 understanding, you were re-doing them for 2005. Or is that  
7 off the table now?

8 MS. NAVARRETE: Has that been changed in the  
9 legislation? I thought it was July of '05, June of '05?

10 MR. KELLY: Yes, it is.

11 MR. GILL: So when do you think we'll see a  
12 working copy so we can start discussing them?

13 MS. NAVARRETE: I haven't started on them, Hal.

14 MR. GILL: Because it has to come through -- we  
15 have to approve -- we need time to do it because it usually  
16 is a large discussion issue.

17 MS. MARTINCIC: So is it over a year away? Is  
18 that what I'm hearing?

19 MS. NAVARRETE: Pardon me?

20 MS. MARTINCIC: I'm hearing it's over a year or  
21 close to a year away that you have to have it completed but  
22 you're waiting to find out what happens with the current  
23 legislation because there's -- cost sealings are addressed  
24 in the current legislation as well.

25 So I think it's why they are probably waiting to

0060

1 see if that's going to further change -- you know, it's  
2 silly for them to come up with a plan right now for June  
3 2005 if current legislation gets passed and it alters what  
4 they would do.

5 CHAIRPERSON CLEMENT: I would agree with that.

6 MS. MARTINCIC: Does that make sense, Hal? We  
7 should know in the next couple months. So by the July  
8 meeting we ought to know.

9 CHAIRPERSON CLEMENT: And then we'll be expecting  
10 those cost sealings. Thank you very much, Judy.

11 MS. NAVARRETE: I had one more update from SAF to  
12 give. And that is, we changed the process a little bit on  
13 the split applications. And that is, we're re-doing the  
14 database so that it just does one P.O. to request one  
15 warrant for all the splits.

16 Up until now the DEQ or SAF has been sending out a  
17 different warrant for each release on an application. I  
18 don't know why or how that was started, but now we will be  
19 giving you a summary, a PD summary of each release so  
20 you'll know how much has been applied to each release but  
21 there will only be one warrant. And that'll cut down for  
22 the regulated community and for us. That was just busy  
23 work.

24 MR. KELLY: You're talking about multiple release  
25 applications?

0061

1 MS. FOSTER: I would just like to say thank you.

2 It will save the State some money, Judy.

3 CHAIRPERSON CLEMENT: Good job. Thank you. Any  
4 other questions or comments on the SAF? Then let's move to  
5 the Corrective Action update with Joe Drosendahl.

6 MR. DROSENDAHL: Yes. My name is Joe Drosendahl  
7 again. And one of the first things I want to say is in  
8 regards to Brian's comment about the hazardous waste, I'll  
9 definitely look into that just to make sure, you know,  
10 there is no mistakes being made. So I'll look into that.

11 Yes. Let me know if you have any questions on the  
12 charts and the numbers and everything. We still don't have  
13 the chart that you subtract the releases being reported.  
14 We're still in the process of fixing the problem that was  
15 presenting, basically, misleading information. Hopefully  
16 the next month we'll have that back up and available.

17 One of my main, you know, priorities right now is  
18 definitely improving the whole CAP process. So I'm hoping  
19 that by next month there will be a lot more CAP  
20 determinations out there quicker. I'm also working  
21 internally to, you know, redevelop the whole CAP process  
22 from beginning to end to make it a lot easier for everyone  
23 inside and outside. So hopefully that will help.

24 The volunteer closures, those -- the volunteer  
25 closures are in here somewhere. We have developed a new

0062

1 process internally to get the volunteer determinations out  
2 real quick. We have developed an affidavit that the  
3 property owner just fills out and signs saying that, I am  
4 the current property owner, and no, I am not the UST owner  
5 or operator.

6 They send that out to us. We just double check  
7 the facility file to make sure that the current  
8 notification form also doesn't have the person's name on as  
9 the UST owner, and we send out the volunteer determination  
10 letter. So we're getting those out real quick now. And  
11 next month the number of the backlog of the volunteer  
12 status should drastically come down.

13 CHAIRPERSON CLEMENT: Thank you. Any questions on  
14 the Corrective Action materials that we received? Thank  
15 you, Joe.

16 Do we want to take a break and then come back for  
17 the next agenda item or do you want to push through?  
18 (Response)

19 CHAIRPERSON CLEMENT: Let's take a 10-minute  
20 break. Everybody be back.  
21 (Meeting break)

22 CHAIRPERSON CLEMENT: We are going to have a  
23 presentation by DEQ on the UST Risk Assessment and  
24 risk-based Corrective Actions process. We have a number of  
25 sub-items that various Commission members had provided in

0063

1 terms of the agenda. We want this to be fairly  
2 comprehensive. So we're going to ask that DEQ provide the  
3 presentation. And then, would you like us to ask  
4 questions, Ren, when you're in the presentation or hold  
5 questions until the end or --

6 MS. WILLIS-FRANCES: The way my train of thought  
7 works is, I prefer if you ask questions during the  
8 presentation.

9 CHAIRPERSON CLEMENT: Okay.

10 MS. WILLIS-FRANCES: If it's something that's  
11 going to be addressed later, I'll let you know.

12 CHAIRPERSON CLEMENT: Okay. And then could you  
13 introduce yourself again.

14 MS. WILLIS-FRANCES: Thanks for asking me here.  
15 I'm Ren Willis-Frances. I'm the Manager of the Rules and  
16 Risk Assessment Unit in the Waste Programs Division. If I  
17 can, without blinding you, direct your attention to the  
18 screen. Can you dim the light?  
19 (Lights turned off)

20 MS. WILLIS-FRANCES: I do appreciate being asked  
21 here today. The reason I called this presentation Risk  
22 Assessment Progress is because it is in progress. It is  
23 something that we are developing. And so what I'm hoping  
24 to come out of today's discussion is that you all will have  
25 a little bit of an understanding of some of the obstacles

0064

1 we face, some of the things we have done, some of the  
2 things that still need to be done. But also, if I can, to  
3 get some of your ideas on future improvements.

4 MR. KELLY: Ren, do you have any other copies of  
5 this?

6 MS. WILLIS-FRANCES: Thank you. That was a very  
7 good question, one which I did anticipate. I had lost the  
8 CD drive to this and so I couldn't get this burned to a CD  
9 so I could not get it printed. If I manage to get this  
10 computer to talk to the printer or find the CD drive or get  
11 this computer to talk to anything, then I will give you  
12 handouts later. So yes, I will try to get those to you. I  
13 do apologize.

14 First, just to make sure that we're all refreshed  
15 in understanding, UST Risk Assessment is a way to set  
16 cleanup levels for contaminated sites. We use risk  
17 assessments to develop most of the tier-one levels so that  
18 you can close a site with the preset SRLs or JPLs. That  
19 would be considered a tier one. The tiers, of course, come  
20 from the ASTM, which is the American Society for Testing  
21 and Materials, from the ASTM's Risk Assessment Guidance.

22 And another option, of course, is to close the  
23 site with site-specific levels. You can use those same  
24 equations that we used which would make it a tier-two risk  
25 assessment, or you can use alternative equations which

0065

1 would be a tier-three assessment.

2 Our process for reviewing these is that -- the  
3 process was developed in order to make sure that everybody  
4 knows where everything is located physically at any time.  
5 What happens is, UST receives the document. It might be a  
6 risk assessment. It might be a work plan. It might be a  
7 tier-two evaluation report.

8 When UST receives it, they log it so that we all  
9 agree to when it was received, the actual date. They then  
10 forward it to the UST project manager. The UST project  
11 manager prepares a summary and a work request, and if it  
12 involves risk assessment information, they will forward the  
13 document to my unit.

14 That could take varying amounts of time depending  
15 on what type of document it was and depending on how  
16 complicated the site was. So I had to put "varies" up  
17 there. I tried to give you an idea of how long some of  
18 this takes. Our unit logs it, again, to make sure we know  
19 where it is and that if UST doesn't have it that we do.

20 And then we do a cursory review. That takes about  
21 two to three days. This is a new part in our process. We  
22 have just started doing the cursory reviews so that we can,  
23 if there are glaring omissions, send them back and ask for  
24 more information, or if we are missing parts of the report.

25 Every Tuesday I and my risk assessment staff meet

0066

1 to schedule the sites that have been received. So we will  
2 schedule the full review on the following Tuesday. We try  
3 to schedule those about one to two weeks out in advance.  
4 The projected dates we give are definitely estimates  
5 because they are based on the cursory review.

6           And if we get into the work plan and there's  
7 missing information or there's other files we have to pull,  
8 it could take a lot longer. That's the reason I don't try  
9 to schedule every single site out for the next several, you  
10 know, months.

11           The risk assessor whose assigned to the project  
12 then reviews it, and they'll write up a technical memo and  
13 they'll send that to the UST project manager. That can  
14 take differing amounts of time depending on what kind of  
15 document, how long it is, how complicated the site is. The  
16 UST project manager will log when the memo came back.

17           And then they'll take some appropriate action. It  
18 might be that we said the risk assessment's great and they  
19 start working on the closure. It might say that the risk  
20 assessment's great and we have to start work on a DEUR, a  
21 Declaration of Environmental Use Restriction. It might be  
22 any number things.

23           If, in our memo, we said too close with risk, we  
24 need more information, then the UST project manager will  
25 convey that to the owner or the operator. The owner and

0067

1 the operator then gathers the data. And depending on what  
2 kind of information that is, whether it exists already,  
3 whether new information has to be generated, that can take  
4 up to a year.

5           When the owner-operator submits the additional  
6 information, then we handle the process on a case-by-case  
7 basis. Some of them, depending on the kind of information  
8 we need, are just kind of okay. That information's there  
9 and we say fine, and we send it back to the UST project  
10 manager for closure. Sometimes we have to review the new  
11 information at great length.

12           Any questions on that process? The question was  
13 asked -- I'm trying also to respond to the Commission's  
14 concerns that they expressed in the agenda. The question  
15 was asked how DEQ and ADHS interact in reviewing risk  
16 assessments.

17           We have an interagency service agreement -- we  
18 call it an ISA -- with the Department of Health. We were  
19 required to have that by the WQARF regulations. In that  
20 ISA, it specifies that we will send volunteer remediation  
21 program sites, water quality assurance revolving fund  
22 sites, and Superfund sites to the Department of Health  
23 Services to review the risk assessment portion of those.

24           My staff reviews the fate and transport aspects of  
25 it and some of the exposure assessment. The Department of

0068

1 Health Services in that document has asked to be involved  
2 in all human exposure sites. So if there is an underground  
3 storage tank where there is actual human exposure, that  
4 will go to the Department of Health.

5 CHAIRPERSON CLEMENT: Could you give us an example  
6 of what you distinguish human exposure, you know, like a  
7 typical case?

8 MS. WILLIS-FRANCES: If a well is contaminated.

9 CHAIRPERSON CLEMENT: So what about direct contact  
10 with contaminated soil at high concentrations? Would that  
11 be a human exposure scenario?

12 MS. WILLIS-FRANCES: It should be. If that's  
13 occurring, that should be a human exposure site and I would  
14 ask the Department of Health service for their help.

15 MR. KELLY: Gail had said contact with soil.  
16 Gail, does that mean vapor inhalation, in your mind, or  
17 dermal contact?

18 CHAIRPERSON CLEMENT: I'm using it very broadly.

19 MR. KELLY: Dermal and vapor inhalation?

20 MS. WILLIS-FRANCES: The vapor inhalation is  
21 usually -- I mean, if somebody is getting dizzy and sick,  
22 yes, it will go to the Department of Health. Otherwise  
23 we'll wait for the sample numbers to make sure that it is a  
24 threat and that people are actually on site being exposed.  
25 A lot of times people aren't there. There may be levels

0069

1 that are unsafe but there may be no one there, and in that  
2 case it wouldn't go to the Department of Health Services.  
3 I mean, there has to be a complete exposure pathway. Does  
4 that help?

5 MR. KELLY: That answers the question definitely.

6 MS. WILLIS-FRANCES: That is relatively rare.

7 MR. GILL: Your last statement, it would have to  
8 be a current complete exposure pathway, not a future one?

9 MS. WILLIS-FRANCES: Correct. And that is why it  
10 is relatively rare for us to ask the Department of Health  
11 Services to help us with the review. The Department of  
12 Health Services will, when we have a situation if one of my  
13 staff gets sick for an extended period of time, for  
14 instance, they will be able to help us.

15 Now, I'd like to point out, they are as  
16 under-resourced as we were. They have one head risk  
17 assessor whose also a bureau chief, and then two other risk  
18 assessors who are funded by ATSDR and have other work  
19 duties. So we try to keep these UST requests of ADHS to a  
20 minimum so that they will have time to work on the  
21 volunteer remediation and the WQARF and Superfund sites.  
22 They are a resource we have.

23 Historically submitted risk assessments. The  
24 Guidance came into effect August 20th of 2002. Reports for  
25 sites that were prepared before then are not subject to

0070

1 those rules. They must show -- Risk Assessment must show  
2 that there will be no threat to public health or the  
3 environment. We have used EPA standards to determine if  
4 the demonstration is adequate on those historic sites.

5 CHAIRPERSON CLEMENT: Ren, is that referring to  
6 excess cancer risk? (Inaudible)

7 When you say standards, is that what you're  
8 referring to, the actual acceptable risk level?

9 MS. WILLIS-FRANCES: No. Those are set by Arizona  
10 statute. What I'm considering standards is the standards  
11 of data quality, the standards of how the risk assessment  
12 was conducted, the equations that were used, how the  
13 statistics were determined, those sorts of standards. We  
14 are provided Guidance on that by the Office of Research and  
15 Development out of the EPA.

16 Submittals for sites that we have previously  
17 reviewed, whether or not they were originally submitted  
18 before or after August 20th, 2002, generally receive  
19 priority scheduling.

20 Now, I say generally because the exception would  
21 be if they undergo the cursory review and they have to go  
22 back out for more information, there are still things  
23 missing from the report.

24 New risk assessments. New tier-two evaluations  
25 must meet our risk-based Corrective Action standards. And

0071

1 the standards are pretty clear so far as what is required,  
2 not only in order to conduct the risk assessment but the  
3 components and information that must be in the report. And  
4 we do use that regulation to review those reports.

5           Some of the common deficiencies. You did not ask  
6 for this information but I thought -- like I said, I'm  
7 trying to generate ideas. I thought this might be helpful.  
8 Some of the common deficiencies we find in these reports is  
9 that there are gaps in the data provided. Usually this  
10 would be lab data that's just missing from the report.  
11 We'll have to ask for that in order to make sure that it  
12 meets the requirements.

13           Another common deficiency is that there's  
14 inadequate justification for eliminating an exposure  
15 pathway. For instance, there might be pavement there, but,  
16 you know, if we don't know, you know, the condition, et  
17 cetera, of the pavement and how it's going to be  
18 maintained, we really can't consider that yet in the risk  
19 assessment. It may very well be an eliminated exposure  
20 pathway, but we would need more information in order to  
21 make sure that that's correct.

22           Now, the third one here, these reports are real  
23 complicated. There's lots of numbers in them. There's  
24 lots of acronyms and there's lots of chemical names. A lot  
25 of times it's something as simple as a typographical error.

0072

1 If the information is inconsistent -- if you say the  
2 Benzene level here is 240 milligrams per liter and over  
3 here you say it's 2.4, we have to ask you to find out which  
4 is correct. So those sorts of inconsistencies in the data  
5 are important for us to track down and correct.

6 And then lastly is adequate identification of  
7 concentrations of chemicals of concern. And this, of  
8 course, is the requirement to use the 95 percent UCL to  
9 match the calculation, the actual equation used for the 95  
10 percent UCL with the data distribution. So this is some of  
11 the statistics in determining the representative  
12 concentration of the contaminants of concern.

13 The status and expected completion date for the  
14 risk assessment software development. The contractor has  
15 provided us software development, a software design  
16 document which tells us how the software will actually  
17 work. This cell will talk to that cell which will talk to  
18 the other cell and put a result in the last cell, that sort  
19 of stuff.

20 They have given us in that information. They are  
21 in the process of programming the software. In fact, I got  
22 the first page of the software yesterday, the part that  
23 will compare concentrations to the tier-one concentrations  
24 to see if the tier-two risk assessment is justifiable.

25 The EPA ProUCL which is the statistical program

0073

1 used to calculate 95 percent UCL is completed, is posted,  
2 and it will be linked to the software. That was on  
3 schedule. I realized as I came here this morning that I  
4 did not provide you the web site for this, and I will need  
5 to do that so that you'll be able to go to it even before  
6 we have the software ready to look at it. We do anticipate  
7 a July deployment of the software.

8 CHAIRPERSON CLEMENT: Is that July 2004?

9 MS. WILLIS-FRANCES: Yes, it is.

10 MR. KELLY: EPA UCL software is ProUCL. Right?

11 MS. WILLIS-FRANCES: Yes.

12 MR. KELLY: You guys didn't tweak it for an  
13 Arizona-specific model?

14 MS. WILLIS-FRANCES: No. It is going to link to  
15 it --

16 MR. KELLY: Okay. It's just a link to get to  
17 the --

18 MS. WILLIS-FRANCES: -- and then it will recapture  
19 the result and put it back in our software.

20 MR. KELLY: Okay.

21 CHAIRPERSON CLEMENT: And the word "deployment,"  
22 that's a fascinating word. Do you mean that that will be  
23 available to the regulated community and will be expected  
24 to be used by the regulated community?

25 MS. WILLIS-FRANCES: I got the word from the IT

0074

1 people. It sounded important. We will have it posted on  
2 the web site by then. Whether you use it or not, it's a  
3 tool. We're offering it. It will generate the reports for  
4 a tier-two evaluation. If you choose not to do it, you can  
5 still follow the Guidance and give us a perfectly  
6 acceptable report.

7 CHAIRPERSON CLEMENT: And is there going to be any  
8 cost to the regulated community for the use of the  
9 software?

10 MS. WILLIS-FRANCES: No, ma'am. That will be a  
11 free download.

12 CHAIRPERSON CLEMENT: Thank you.

13 MS. WILLIS-FRANCES: If, however, you need it on  
14 CD, we would have to charge for the price of the CD.

15 MR. KELLY: Can you go back two and let me ask you  
16 about that?

17 MS. WILLIS-FRANCES: Yes.

18 MR. KELLY: I'm thinking about this inadequate  
19 justification because now we're writing the software and  
20 it's all falling into place. And the example you used is a  
21 great one. How do the citizens of Arizona know that this  
22 asphalt's going to be maintained in this condition into  
23 2050. Okay? That's a great question.

24 MS. WILLIS-FRANCES: My unit also handles  
25 Declarations of Environmental Use Restriction. And that

0075

1 would be the tool that we would use --

2 MR. KELLY: So can you tell us in this example  
3 that we're using here, how would you -- how would the  
4 citizens of Arizona know for certain if that asphalt's  
5 going to be maintained by 2050? By the DEUR?

6 MS. WILLIS-FRANCES: Yes.

7 MR. KELLY: Okay.

8 MS. WILLIS-FRANCES: By the DEUR. I was asked to  
9 speak to software options in lieu of DEQ software. There  
10 is commercial software out there that has been used and has  
11 actually been used for some successful closures. My  
12 caution is that it may have equations that differ from  
13 those that we use, most importantly in the leachability  
14 equations that Arizona has developed that is specific for  
15 Arizona conditions.

16 But also in toxicity information, we will be  
17 keeping our software very up to date. Some of the  
18 commercial software is not, is a little bit older or you  
19 might have an older version. So use a little caution  
20 there. And this is my comment about using the software.  
21 This is a tool. Even if you use it, we will still need  
22 laboratory data and all the other required components.

23 So you still need to follow the Guidance and look  
24 at that. The software will prompt you on most of that, and  
25 it will say, attach this document. And it's going to come

0076

1 up in a little pop-up window to coach you on preparing a  
2 tier-two evaluation report.

3 CHAIRPERSON CLEMENT: In terms of the toxicology  
4 data that you're using, is it final toxicology accepted by  
5 pier review? I mean, what toxicology data do you think is  
6 up to date because there's a lot of controversy right now  
7 on some of the data.

8 MS. WILLIS-FRANCES: Our Guidance actually sets  
9 out the priority in which we rely on different sources.

10 CHAIRPERSON CLEMENT: So would you, or example --

11 MS. WILLIS-FRANCES: IRIS is the first one we look  
12 at.

13 CHAIRPERSON CLEMENT: Would you use any draft -- I  
14 have been involved in TCE risk assessments, and there is  
15 new draft toxicology data for TCE. Would you, for example,  
16 expect that to be used, or would you use those that are in  
17 existence that have been accepted and pier reviewed?

18 MS. WILLIS-FRANCES: First, some of the draft is  
19 stuff that's not in existence. In that instance, the draft  
20 might be the best thing you have to rely on. Okay? If  
21 there is a standard in existence and there is a draft,  
22 we're going to use the standard because it has been  
23 previously pier reviewed and accepted by science.

24 CHAIRPERSON CLEMENT: Thank you.

25 MS. WILLIS-FRANCES: Outreach. On May 19th, put

0077

1 on it your calendars, the UST program will be hosting their  
2 annual underground storage tank program conference. There  
3 will be some risk assessment topics addressed at that  
4 conference. Also, the web site will be used for a lot of  
5 the outreach. We'll be posting the software and  
6 information about the software upon deployment.

7 Groundwater risk assessments. There are three  
8 groundwater risk assessment closures currently under  
9 review. Two of those will require a DEUR. One might but  
10 it doesn't appear so at this point. None of them have been  
11 approved yet. So we're getting there. We have all the  
12 things in place. We just haven't received the applications  
13 yet. We haven't completed the review of the risk  
14 assessments.

15 MR. GILL: I thought that in the -- I'm trying to  
16 think of where it was in the rules, but I thought that all  
17 groundwater contamination above AWQS had to have a DEUR.

18 MS. WILLIS-FRANCES: We're getting into some  
19 technical issues where I'm going to have to defer because I  
20 don't know the UST regulations as well. Joe?

21 MR. DROSENDAHL: It's been a while since I looked  
22 at that too. I would hate to say anything wrong; i.e., I  
23 would have to look into that and we can get back to you.

24 MS. WILLIS-FRANCES: Thank you.

25 MS. HUDDLESTON: Ren, may I? May I --

0078

1 MS. WILLIS-FRANCES: Certainly.

2 MS. HUDDLESTON: I don't know the technical  
3 aspects of it, Hal, but under the statute, any closure that  
4 is not to standards, you know, that is above at least  
5 residential standards for soil -- and I'm not certain what  
6 the standard is for water -- that requires an institutional  
7 or an engineering control to eliminate exposure requires a  
8 Declaration of Environmental Use Restriction.

9 MS. WILLIS-FRANCES: Judy.

10 MS. NAVARRETE: May I add one thing to this? The  
11 DEUR needs to be recorded in the County before we will pay  
12 for it. That was another issue on appeals.

13 CHAIRPERSON CLEMENT: I had a question.

14 MS. WILLIS-FRANCES: Yes.

15 CHAIRPERSON CLEMENT: A more broader-based  
16 question. It seems as if when materials are received by  
17 the risk assessors that there could be the potential for  
18 duplication of effort between the corrective actions group  
19 and the risk assessment group in terms of data, analysis,  
20 completeness, validation or verification, whatever system  
21 you want to call that.

22 Has that happened at all? And who has the lead in  
23 terms of -- you get the data package, you know. Looking at  
24 the QAQC on that, who between the risk assessor and the  
25 project manager in the Corrective Actions group would be

0079

1 responsible for that?

2 MS. WILLIS-FRANCES: We're trying to clarify that.  
3 We have just developed some quality assurance protocols  
4 internally that is going to help address that and make sure  
5 not only that we know who is supposed to look at a given  
6 piece of information but also to make sure they have the  
7 training to look at it.

8 CHAIRPERSON CLEMENT: Right now if you got  
9 something in, would both groups look at it or would just  
10 one group look at it?

11 MS. WILLIS-FRANCES: Right now the risk assessor  
12 and the project manager would work it out. If the project  
13 manager does not feel that they have the adequate  
14 experience, they are going to ask the risk assessor to look  
15 at it.

16 CHAIRPERSON CLEMENT: And then there are different  
17 levels of data validation that are accepted in different  
18 programs, and at least historically the UST program, the  
19 data validation levels tended to be on the lower end versus  
20 the higher end.

21 Are you running into any conflicts in getting the  
22 required level of QAQC from the typical UST database in  
23 order to approve a risk assessment?

24 MS. WILLIS-FRANCES: This is part of where it  
25 becomes important when the evaluation report was submitted.

0080

1 If we're trying to use EPA standards, then that will  
2 include the EPA quality assurance standards.

3 CHAIRPERSON CLEMENT: Is that, like, a tier-three  
4 or a tier-two or is there --

5 MS. WILLIS-FRANCES: That would be for anything --

6 CHAIRPERSON CLEMENT: Well, I mean --

7 MS. WILLIS-FRANCES: Well, except the site  
8 characterization tier one.

9 CHAIRPERSON CLEMENT: No. I mean, not the  
10 tier-one risk assessment, but they have basically  
11 laboratory tiers in terms of data validation levels. And  
12 like a tier-four includes the GCMS graphs and stuff like  
13 that so there's a step-wise progression. Is there a  
14 certain level of QAQC that's typical lab language that's  
15 going to be required in the UST risk assessments? For  
16 example --

17 MS. WILLIS-FRANCES: Joe? Like I said, we're  
18 working on our quality assurance. The last time I was  
19 aware of it, we weren't going to make a lot of changes. Is  
20 that correct? Well, we need to work that out.

21 MR. DROSENDAHL: Yes.

22 MS. WILLIS-FRANCES: We need to work that out and  
23 get back to you on that because that is definitely  
24 something that is newer and in process. It's even newer  
25 than this.

0081

1           MR. DROSENDAHL:  And as Ren said, you know, we're  
2 definitely increasing the communication between the two  
3 groups so, you know, the miscommunications are, you know,  
4 eliminated and everything.  We're doing everything we can  
5 to make sure that everything is done consistently.  And,  
6 you know, we're planning on doing everything we can and  
7 increasing that so --

8           CHAIRPERSON CLEMENT:  You know, I misspoke.  I  
9 used the word "tier."  It's levels.  Level one, two, three,  
10 and four.  And I have seen some relaxation in the WQARF  
11 program recently in terms of the level of QAQC that's  
12 necessary on data packages.

13           And I just think you need to be very clear,  
14 because I'm not sure that SAF would be paying, for example,  
15 for a level-four or a level-three data package.  Yet a risk  
16 assessor certainly at an EPA level would want something of  
17 that nature.  So that seems to me to be a conflict that, if  
18 you can provide clarity to the regulated community up front  
19 and then work through the SAF review also, because if  
20 you're requiring it, then it would be my opinion, anyway,  
21 it needs to be paid for.

22           MS. WILLIS-FRANCES:  Those are some of the exact  
23 issues and the exact reasons we were asked to go back to  
24 look at our quality assurance, not just the program but  
25 holistically.

0082

1                   CHAIRPERSON CLEMENT:  And when will you have sort  
2  of the information regarding this that would be available  
3  to the regulated community?

4                   MS. WILLIS-FRANCES:  I do not yet have a projected  
5  date on that.  I do know that we have drafted documents  
6  inhouse.

7                   CHAIRPERSON CLEMENT:  Because that's a very tricky  
8  issue.  Okay.

9                   MR. KELLY:  So I have two questions.  First, I'm  
10 still stuck at how any groundwater risk assessment closure  
11 can be achieved without a DEUR.  How can we have any  
12 groundwater risk assessment closure without a DEUR?  I  
13 still don't understand that.

14                   MS. WILLIS-FRANCES:  Phil.

15                   MR. MCNEELY:  What the Corrective Actions rules  
16 say is that if a groundwater closure requires -- if you're  
17 using institutional engineering control for groundwater  
18 closures, you have to put a DEUR on it.  (inaudible)

19                   So the argument would be -- could be made, well,  
20 am I using an engineering code to close this site that has,  
21 you know, no water in it except six months out of the year  
22 or it's not from an aquifer or not submitted, that's an  
23 argument you could make possibly, (inaudible) but I'm not  
24 saying that argument will win or not.  There is a  
25 possibility you could probably do something like that.

0083

1                   MR. KELLY: Okay. That's -- and I understand what  
2 Phil's saying. And this leads me to my second point, and  
3 this is the huge point, (inaudible) the public health thing  
4 that we need to get an answer on. What Phil's talking  
5 about would serve great in the Asarco mine complex where  
6 that contaminated well three miles out there in the middle  
7 of this mine is never going to have people in contact with  
8 the groundwater.

9                   Therefore, I could go into my risk model and I  
10 could change in my consumption rates from whatever we  
11 assume the default or an adult or a child to zero. They  
12 are going to be consuming zero liters of this water per day  
13 and I could risk it out. And it applies at a mine site.  
14 How do I do that in downtown Phoenix?

15                   MS. WILLIS-FRANCES: The only instance I can think  
16 of that would be if there were a pre-existing ADWR well  
17 restriction, then you would again have zero contact,  
18 consumption of that water.

19                   MR. KELLY: And that's my point right there. In  
20 downtown Phoenix, in any AMA there is no ADW. That's why  
21 they are AMAs because every drop of this water will be  
22 consumed now or in the future, and we have to guard it so  
23 preciously. So do you guys understand where I'm -- how are  
24 we going to hurdle this? We are creating legislation down  
25 there as we speak that's predicated on this tool and there

0084

1 is no answer of how we can use this tool. I don't see how  
2 we can use this tool outside of a Asarco mine complex, a  
3 large mine complex.

4 MR. GILL: I don't believe -- I can't fathom an  
5 example in a groundwater site within -- outside of a mine  
6 or something like that where you can close it with levels  
7 above AWQS.

8 CHAIRPERSON CLEMENT: I think there are  
9 circumstances where either existing ambient water quality  
10 conditions or other contaminants that are in place in the  
11 aquifer would allow you to go through a process because the  
12 water can't be used anyway, perhaps. I mean, that's the  
13 other scenario I can see.

14 MR. GILL: But I think it would still have to have  
15 a DEUR, I think, because in 50, 60, 70 years they may have  
16 to use that water, so it has to be brought out and treated  
17 or something like that.

18 That's the problem with all of these risk  
19 assessments. In looking at the future use, we have no idea  
20 what the future use is. I would have concerns at a mine  
21 site. Cerito in Tucson, they are closing Cerito. They are  
22 developing all that land. They are going to be putting  
23 houses on it.

24 MR. KELLY: Well, Hal and Gail, I think this is  
25 the question I would ask this Policy Commission to figure

0085

1 out is, who gets to decide the exposure assumptions we use  
2 in ground water risk closures? Who gets to decide that?  
3 Is that a discretionary decision of the ADEQ and the  
4 individual risk assessor? Are they going to pull Will  
5 Humble in on that?

6 That is the issue, folks. That's the issue. And  
7 we are predicating huge legislative packages on that  
8 fundamental issue, and nobody has a good handle on that, I  
9 don't think.

10 CHAIRPERSON CLEMENT: Mr. McNeely.

11 MR. MCNEELY: Let me tell you what we do in WQARF.  
12 DWR does a lot of these (inaudible). All of our WQARF  
13 sites, DWR will notify the well driller that there's  
14 contamination before they put in a well. They notify the  
15 project manager, the DEQ. Everyone knows. So  
16 theoretically, nobody should be, you know, blindly putting  
17 a well in contamination and drinking it without anybody  
18 knowing. If we apply something like that to UST --  
19 (inaudible)

20 So in terms of the way WQARF works, there is a  
21 notification process with DWR. So all your concerns about  
22 how do you project 100 years out, there would be a process  
23 in place under WQARF.

24 So, theoretically, WQARF, you know, we can close  
25 sites with the ROD that has water quality because we have a

0086

1 mechanism in place where everyone whose going to use that  
2 water, all the water providers are notified, everyone  
3 agrees. They'll be notified before they use it. If  
4 something pops up in the future where they need that water,  
5 it's WQARF's responsibility to provide drinking water,  
6 provide for the use of the water. It's set up in the  
7 program.

8 MS. HUDDLESTON: Or the responsible parties.

9 MR. MCNEELY: Or the responsible party for the  
10 proportionate share, whoever. That's how it works. UST  
11 could have the same type of approach to make something like  
12 this work without having DEURs on every 600-and-something  
13 groundwater sites. It's not set up yet. It could be in  
14 the future, but there is already mechanisms in place under  
15 a WQARF program under a DWR. Computer systems are set up.  
16 Something like that could be down the road.

17 MR. KELLY: It could. Phil, it absolutely could  
18 but, folks, we are going down this road without that --  
19 that is a huge issue and it has to be resolved. It  
20 works -- what Phil's outlining works great for WQARF sites.  
21 We have 33 WQARF sites in this state. He's talking about  
22 33 huge sites in this state. We're talking about 7,500,  
23 8,000.

24 MR. MCNEELY: Well, there's 625 groundwater sites,  
25 but it would be the same database. It's all set up. It's

0087

1 all GIS, all GPS. It's in the database. So that's just  
2 how it could work, but right now the thought is, put a DEUR  
3 on it if you want to close your site for groundwater. But  
4 that's the way it is right now.

5 MR. KELLY: That's your option.

6 MR. GILL: And that's assuming that the well is  
7 going to be put in with a permit because there are even --  
8 I mean, we know of a site where the City put in a well and  
9 didn't get a permit and put it right in the middle of a  
10 (inaudible) plume.

11 MR. MCNEELY: But that's not following  
12 regulations.

13 MR. GILL: Well, but that's the whole point.  
14 There are people and cities out there that don't follow  
15 regulations. How, as a risk assessor, am I supposed to  
16 assume there's not ever going to ever be any risk because  
17 there's never going to be a well put in in that plume? You  
18 can't.

19 CHAIRPERSON CLEMENT: I think you have to go with  
20 the 90-10 rule, I mean. And if somebody's breaking the  
21 law, somebody's breaking the law. But most well drillers  
22 that I know are going to lose their license if they drill  
23 on (inaudible) wells, and they are very, very paranoid  
24 about it. And, you know, they are very extremely cautious  
25 about getting the necessary permits in some cases where

0088

1 they may, in fact, not need them, but you go through the  
2 process anyway.

3 I don't think you can regulate every single  
4 instance of somebody breaking the law. I don't think it's  
5 possible. Joe, you've got a comment.

6 MR. DROSENDAHL: Yes. Right now groundwater risk  
7 assessments are a pure option available to the owners and  
8 operators. I know with the current legislation there's  
9 language that is -- you know, may indicate otherwise but,  
10 you know, I'm kind of unsure what the legislation says and  
11 means. Plus, who knows if that's even going to go through?

12 But right now groundwater risk assessments are  
13 just a pure option. Right from the beginning of RBCA  
14 development, we have never really thought that risk  
15 assessments would hardly ever be used for ground water  
16 except for maybe, you know, big -- you know, big sites  
17 where it's totally on the property and, you know, people  
18 are always going to be there, you know.

19 And then, you know, they put a DEUR on the  
20 property and, you know, no problem. So right now ground  
21 water risk assessments are a pure option.

22 CHAIRPERSON CLEMENT: Any other questions? I know  
23 that there has been a concern regarding the promptness of  
24 risk assessment reviews that have been historically in the  
25 process for a long time. And I mean, at least the

0089

1 statistics I have seen, some of them date back to 2000.

2 Are you trying to prioritize the historic ones and get them

3 out or --

4 MS. WILLIS-FRANCES: That's a good question, and I

5 don't recall if I have a slide on it or not, but it's

6 something we've thought about. When we set priorities for

7 the sites, the things we consider are public health risks.

8 We have to consider that first. That's why environmental

9 quality exists.

10 The second thing we consider is active migration.

11 Is it likely to go off site? Is it on site now and likely

12 to go off site? If that's the case, we're going to

13 prioritize that and try to nip it in the bud before it goes

14 off site.

15 Then we will consider property transfers because

16 we know that time is money. I know you don't think we know

17 that but we do, and we're trying to be very, very sensitive

18 to that. And so we will look at someone who has told us

19 that there is a land transfer pending. We will try to

20 prioritize that site.

21 Fourth. We look at the order in which they were

22 received and that is where the historic ones would be

23 prioritized above the more recent ones.

24 CHAIRPERSON CLEMENT: Is there any statutory or

25 regulatory mandate for you to turn around a risk assessment

0090

1 review within a certain period of time?

2 MS. WILLIS-FRANCES: No.

3 CHAIRPERSON CLEMENT: So basically you have an  
4 open book, and it seems like that's been used pretty -- I  
5 won't say excessively, but has been used in the past  
6 because, you know, waiting for a turnaround on a document  
7 for over two years is really a very difficult thing for  
8 someone.

9 And I would just encourage that this fourth point,  
10 if you've got risk assessments that are in the pile that  
11 have been there for multiple years, I think those should be  
12 priorities. Any other comments or any other questions?

13 MR. VANNAIS: Leon Vannais, for the record. Right  
14 now the focus seems to be on risk assessments for closure.  
15 Okay.

16 There's also risk assessments for cleanup  
17 standards. And this is when it becomes, the timing,  
18 especially if this legislation passes and we're looking at,  
19 you have X number of years to get your job done, and  
20 requiring people to go ahead and do a risk assessment to  
21 develop alternative cleanup standards before they can even  
22 start to do the cleanup, that's one of the places where the  
23 time frames is going to shoot everybody in the foot,  
24 including the Department.

25 And just -- I don't know if you're aware that

0091

1 every soil site is going to be submitting that's 2000 --  
2 release is going to be submitting to the Department a  
3 tier-two risk assessment to try to establish a tier-two  
4 cleanup level before cleanup actually exists, those who are  
5 just doing it to establish a new clean up level, that  
6 number's going to have to be established before a  
7 corrective action plan is public noticed so we can go ahead  
8 and clean up that site.

9 So you're looking at a huge amount of workload  
10 coming in. And I just don't know if the Department's even  
11 close to being able to handle something like that.

12 MS. WILLIS-FRANCES: I am cognizant of that, of  
13 the huge workload headed my way.

14 MR. KELLY: He's making an assumption, and I want  
15 to make sure it's a valid assumption. And maybe Joe and  
16 you both need to comment on this.

17 My tier-two risk assessment that I hand in under  
18 the corrective action rule with my SCR, my CAP, my next  
19 deliverable, is that tier-two risk assessment going to her  
20 unit under that first slide; comes in, gets logged, handed  
21 over, handed back? Is that risk assessment going to her  
22 unit also? We're assuming it is.

23 MS. WILLIS-FRANCES: I have been assuming it is.

24 MR. DROSENDAHL: Yes. I mean, you know, with the  
25 tier-two software, you know, hopefully with that, you know,

0092

1 it's going to make these reviews a lot quicker.

2 MR. KELLY: Right. But the point is, it is. it  
3 is -- every one of those is leaving your unit and going  
4 over to her. Right?

5 MR. DROSENDAHL: Right. I mean, that's currently  
6 the way it is. If, down the road, changes need to be made,  
7 changes will be made. And, you know, that's why, you know,  
8 we're always going to be, you know, communicating. And,  
9 you know, if the workload becomes unbearable, then, yes,  
10 DEQ's going to do things to, you know, get those out  
11 quicker and, you know -- so, yes, it's kind of hard to  
12 predict exactly what's going to happen.

13 But yes, we assume that, yes, a lot of tier two's  
14 for soil will be submitted. And the software, it's going  
15 to make it easier to do that so there will be a lot. We're  
16 going to get more. And we'll just have to wait and see and  
17 deal with it.

18 But yes, we're increasing our communication. And,  
19 you know, as long as I'm here, I'll continue and Ren will  
20 win too. But yes, I can understand, you know, the  
21 regulated community's concern that it's like, is there a  
22 huge new bottleneck coming?

23 MR. KELLY: This is not a problem I'm making. I'm  
24 just pointing it out. We have --

25 CHAIRPERSON CLEMENT: Okay. Let's not go to the

0093

1 things that might happen. Let's stay on point here  
2 because --

3 MR. KELLY: Well, I'm saying that's happening  
4 right now.

5 CHAIRPERSON CLEMENT: Well, we don't have  
6 legislation that's been approved that may change this  
7 program or not. I mean, not everything is going to a  
8 tier-two process right now.

9 MR. KELLY: No. It is. By rule it is. You have  
10 to hand in a tier-two risk assessment. That's my point is  
11 that I'm getting an SCR --

12 CHAIRPERSON CLEMENT: I don't believe that's the  
13 case.

14 MR. KELLY: The rule tells me that at my next  
15 deliverable I have to do a tier-two evaluation.

16 MR. DROSENDAHL: Now it doesn't.

17 MR. GILL: Well, if you want reimbursement, it's  
18 not an option.

19 MS. FOSTER: I would disagree.

20 MR. KELLY: You're telling me that I don't have to  
21 do a tier-two risk assessment?

22 MR. DROSENDAHL: The RBCA rules were created and  
23 the tiers were just an option available to the  
24 owner-operator.

25 CHAIRPERSON CLEMENT: I thought that was pretty

0094

1 clear at the beginning of this presentation. At least that  
2 was the DEQ position. Right?

3 MS. FOSTER: It's a rule that's an option but it  
4 doesn't say you have to do it.

5 MR. KELLY: For groundwater or soil are we talking  
6 about?

7 MS. FOSTER: Either.

8 MR. DROSENDAHL: Either.

9 CHAIRPERSON CLEMENT: It's not a requirement.

10 MR. GILL: If you're going to -- the requirement  
11 of the statute is that you have to choose the most cost  
12 effective. Well, if closing it with a risk assessment is  
13 the most cost effective and you haven't done a risk  
14 assessment, then you have not determined the most cost  
15 effective.

16 And so to get SAF reimbursement because you have  
17 gone through the process, you have to do a risk assessment  
18 to prove that, no, I can't close this with no risk so I  
19 have to do active remediation.

20 MR. VANNAIS: Well, Judy, the part of the statute  
21 that I think people are getting confused here is that State  
22 Assurance will pay up to the highest allowable remaining  
23 contaminant concentrations as required by rules under the  
24 section. So if you're looking to getting reimbursement  
25 from the State Assurance Fund --

0095

1           CHAIRPERSON CLEMENT: I think we have got an issue  
2 here that needs much further clarification and we are  
3 running out of time today. So, you know, let's wrap it up  
4 quickly. And we will, unfortunately, Ren, ask you back,  
5 and Joe, to clarify this issue because this is major. If  
6 people are under the impression that they must follow a  
7 certain course of action and DEQ doesn't know that that's  
8 what they think, that's important.

9           MR. VANNAIS: Judy, are you under the impression  
10 that the State Assurance Fund will only pay up to tier two?

11           MS. NAVARRETE: I'm not going to answer that  
12 question right now. Let's get some clarification first.

13           MS. WILLIS-FRANCES: We're going to huddle. We'll  
14 get back to you.

15           CHAIRPERSON CLEMENT: And I'll clarify the agenda  
16 item for the next Commission meeting so that the questions  
17 is clear, but I think we're all sort of a little bit  
18 bumping into the wall here and -- so that you have an  
19 answer, so that we have a question and you have an answer.

20           But I think we've got -- the issues that I see on  
21 the table are clarification regarding when the tier two  
22 would be required and how it relates to the SAF and the  
23 payout cycle. And I'll get a little bit finer detail and  
24 get that out within the next week or so so you have a  
25 chance to really look at this. But I think we have got the

0096

1 concept now. And I'm sorry. Are there any other things  
2 you wanted to present to us today, Ren?

3 MS. WILLIS-FRANCES: The rest of the slide show.

4 CHAIRPERSON CLEMENT: Okay. Keep going.

5 MS. WILLIS-FRANCES: What we consider backlog are  
6 the sites that came into our program prior to August of  
7 2002. We have three of those which are still what we call  
8 active. They have not had an approvable risk assessment  
9 submitted. We are awaiting information from the consultant  
10 on two of those. We have asked for further information and  
11 we are waiting for a response. And the other one, I'm  
12 told, will be out with a letter to the consultant within  
13 three weeks.

14 We have been reviewing one UST document per week  
15 for the last eight weeks, and we plan to maintain that  
16 pace. We can do this because we have brought another risk  
17 assessor on, and she is beginning to learn how to do that  
18 and is handling some of the risk assessments on her own.  
19 She is continuing on her learning curve. We're also able  
20 to do this because the tier-two software is slowing down  
21 now that the contractor's doing the actual programing.

22 This is where we're at right now in the last 12  
23 months. We have reviewed 20 of those risk assessments that  
24 were received before August 20th, 2002. We have reviewed  
25 18 that were submitted subsequent to that. So it's 38 in

0097

1 all. We have been reviewing an average of around three per  
2 month. The risk assessment documents that we have received  
3 in the last 12 months, 24 of those -- and again those are  
4 work plans, tier-two evaluation reports, any kind of risk  
5 assessment document, 24 of those are from UST sites.

6 The number of UST sites that have been closed with  
7 risk assessment is five. So you can see that we are  
8 looking at a lot of documents that aren't necessarily  
9 closure documents. The sites that we have currently in our  
10 queue with risk data that has to be reviewed. We have 15  
11 of those right now.

12 Our goals. And this is where your help, you know,  
13 now or in writing or e-mail or whatever, we're trying to  
14 improve our timeliness. We're trying to increase our  
15 efficiency and insure consistency while maintaining  
16 technical soundness.

17 And that's me if you have any comments after this  
18 presentation.

19 CHAIRPERSON CLEMENT: Ren, is it W-r-e-n?

20 MS. WILLIS-FRANCES: No. R-e-n.

21 MR. GILL: You said zero as far as closure. And  
22 you said you've closed five. Is that before this graph?

23 MS. WILLIS-FRANCES: They actually are taken at  
24 different times. Ours were April figures, and I think  
25 yours were, like, mid March or something. So, A, UST

0098

1 probably has closed some and, B, those might be ones that  
2 we have sent the memo back to the UST project manager, and  
3 I may have made a wrong assumption that those were  
4 closeable now that the risk assessment's been approved.  
5 There may be other hang-ups.

6 CHAIRMAN CLEMENT: Okay. So from the sense of the  
7 risk assessment.

8 MS. WILLIS-FRANCES: And this brings up a good  
9 point. This is one thing we're trying to clarify in  
10 working with the UST track people to try to get good  
11 milestones in the risk assessment process that can be  
12 tracked so that we're all using the same words that mean  
13 the same things. So that is something I'm working with  
14 Ron's staff on.

15 CHAIRPERSON CLEMENT: Any other questions or  
16 comments for Ren? Thank you very much. Appreciate your  
17 time.

18 Okay. Let's jump here, folks. The next item is  
19 agenda items for the May meeting. If anybody has them,  
20 please get them to me. I can see right now we're going to  
21 want a legislative update. We're going to want to have  
22 some additional discussion on tier two's, SAF and how this  
23 all fits together. Also the QAQC requirements, data  
24 validation. And I want to keep driving that point because  
25 you can't recreate data. So if you have to do QAQC often,

0099

1 it has to be done up front.

2           And any other agenda items the Commission has  
3 right now for us? I'll get an agenda out pretty quickly  
4 like we did last time. And Al's been very helpful in  
5 getting things compiled. Okay. And then I had a call to  
6 the public. Mr. Vannais.

7           MR. VANNAIS: I just had one quick comment as far  
8 as the number of appeals that are going and how people are  
9 tracking that. And I know on the tail end of this very  
10 important risk assessment issue, this probably doesn't have  
11 as much significance now. But we're getting determinations  
12 that are extremely inconsistent on the same site.

13           And looking at the number of reviews that are  
14 going on, we're finding three determinations on the same  
15 specific site reviewed by three individuals. One's 100  
16 payment, one's zero pay, and the third's one's 100 percent  
17 payment. I know in past history, claim reviewers either  
18 maintained a notebook of consistent determinations made in  
19 response to activities on a site.

20           I wonder if that was something that they could  
21 reinstate again or that the manager of the claims review  
22 unit, the technical portion could focus much more on  
23 maintaining consistency in decisions. Of course nobody's  
24 ever going to agree all the time, but at least we know what  
25 it is that's expected. And this is a little bit in

0100

1 response to Mr. Rocha's comment that if we tell you  
2 something once, then use that in the future. Well, that  
3 only works if the things that you're telling us is  
4 consistent from application to application. So we would  
5 appreciate just a stronger look at consistent decisions  
6 coming out of the Claims Review Unit.

7 My second point is towards training. Training,  
8 when it comes to having vendors come in and talk to the  
9 Department is very good. Cutting into cutting edge  
10 technology is very good. I think what we are having here  
11 is some difficulty of some individuals who have not done a  
12 lot of field work actually understand the processes that go  
13 into the day-to-day operations of corrective actions at  
14 these sites.

15 I would encourage the Department to look more  
16 strongly at providing that type of training, having them go  
17 out with the State lead people and do the sampling and get  
18 out there in the field and realize the troubles, the  
19 day-to-day troubles that can occur in the field instead of  
20 having this 10,000-foot kind of overview paper kind of  
21 analysis of what's going on without understanding the  
22 day-to-day operations because that's where we're getting a  
23 lot of, well, why do you need this? Oh, that's why you  
24 needed that.

25 And that kind of stuff could easily handled by

0101

1 some additional training, especially with the (inaudible)  
2 projects where things get quite complicated sometimes. And  
3 that's all.

4 CHAIRPERSON CLEMENT: Mr. Drosendahl.

5 MR. DROSENDAHL: In regards to that, I totally  
6 agree, and that is something that is on our training plan  
7 is, you know, getting staff more field experience with  
8 going out with State lead and everything. So I definitely  
9 agree.

10 CHAIRPERSON CLEMENT: Thank you very much.

11 The next meeting of the UST Policy Commission is  
12 Wednesday, May 26, 2004. It will be in this room in this  
13 building. And please, if you have any agenda items, get  
14 them to me. We really want to keep this moving forward.

15 Thank you very much.

16 (Meeting Adjourned at or about 12:05 p.m.)

17

18

19

20

21

22

23

24

25

0102

1

2

3

4

5

6

7

C E R T I F I C A T E

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

DATED at Phoenix, Arizona this 21st day of April, 2004.

---

Clark L. Edwards  
Certified Court Reporter  
Certificate No. 50425