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1 ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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3 MEETING OF THE

4 UNDERGROUND STORAGE TANK POLICY COMMISSION

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7 Phoenix, Arizona

8 March 24, 2004

9 9:00 a.m.

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11 Location: Arizona Department of

12 Environmental Quality

13 Conference Room 250

14 1110 West Washington

15 Phoenix, Arizona

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1 COMMITTEE MEMBERS PRESENT:

2 Gail Clement, Chairperson

3 Hal Gill, Vice Chairperson

4 Roger Beal

5 Shannon Davis

6 Theresa Foster

7 Michael O'Hara

8 Tamara Huddleston

9 Andrea Martincic

10 Myron Smith

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CHAIRPERSON CLEMENT: Good morning. Welcome to the March 24th, 2004 UST Policy Commission Meeting. I'd like to start with a roll call. Theresa.

MS. FOSTER: Theresa Foster.

MR. BEAL: Roger Beal.

MS. MARTINCIC: Andrea Martincic.

CHAIRPERSON CLEMENT: Gail Clement.

MR. GILL: Hal Gill.

MR. SMITH: Myron Smith.

MS. DAVIS: Shannon Davis.

MS. HUDDLESTON: Tamara Huddleston.

MR. O'HARA: Mike O'Hara.

CHAIRPERSON CLEMENT: The first agenda item is approval of the January and February 2004 UST Policy Commission meeting minutes. Did everybody receive a copy of the information? Did anybody have difficulty opening e-mails or electronic data transfers?

MS. MARTINCIC: I did. I had a problem with the February minutes for some reason, saying it was associated with a different program. It wasn't in Word or it wasn't in a recognized format or something for my computer. Can you make them in PDF form or something maybe?

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1 MR. JOHNSON: Generally we get them in a Word
2 format. So I'll check that. It might have been in an
3 ASCII file, but I'll check on that.

4 MS. MARTINCIC: It wasn't a Word icon. It was
5 something else.

6 MR. JOHNSON: Well, I'll double check on that.

7 CHAIRPERSON CLEMENT: Thank you, Al Johnson.
8 Al will check on making sure the meeting minutes that
9 are delivered in electronic format are in a
10 commonly-used software program so people can open them.
11 And then if the Policy Commission does experience that
12 problem in the future, I think it would be a good idea
13 to get ahold of Al directly right way so he can e-mail
14 something out again.

15 MR. GILL: Did you try to open it or save it?

16 MS. MARTINCIC: No. I tried to open it. It
17 said I had to associate it with something, and I didn't
18 recognize what it was.

19 MR. GILL: If you save it, then open it in
20 Word, then it will open. That's what mine did.

21 MS. MARTINCIC: Save it as a Word document?

22 MR. GILL: Well, yes, just save it, and then
23 when you go back in and open it --

24 MS. MARTINCIC: Okay. Well, I'll try that
25 when I go home.

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1 MR. JOHNSON: And if it's still a problem, let
2 me know.

3 MS. MARTINCIC: Okay.

4 MR. BEAL: I got it open but I had to do it
5 that way.

6 CHAIRPERSON CLEMENT: Okay. Do I have a
7 motion on approval of the January 2004 meeting minutes?

8 MR. SMITH: I move that the minutes be
9 approved.

10 CHAIRPERSON CLEMENT: Second?

11 MR. BEAL: I'll second.

12 CHAIRPERSON CLEMENT: All in favor?

13 (Response)

14 CHAIRPERSON CLEMENT: All opposed?

15 (No opposition)

16 CHAIRPERSON CLEMENT: Do I have a motion on
17 approval of the February 2004 meeting minutes?

18 MS. SMITH: I move that the February minutes
19 be approved.

20 CHAIRPERSON CLEMENT: Second?

21 MR. BEAL: Second.

22 CHAIRPERSON CLEMENT: All in favor?

23 (Response)

24 CHAIRPERSON CLEMENT: All opposed?

25 (No opposition)

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1 CHAIRPERSON CLEMENT: Okay. We have
2 reorganized the agenda slightly due to some schedule
3 conflicts that people had this morning. So the next
4 agenda item is the financial subcommittee update, and
5 Andrea Martincic, the subcommittee chairperson, will
6 lead that discussion.

7 MS. MARTINCIC: I apologize I wasn't at the
8 last Commission meeting to kind of give an update at
9 that last meeting which I wanted to do, but basically
10 the financial subcommittee has met. We have had three
11 meetings over the last month. So we were meeting
12 pretty much every other week. And the first meeting,
13 we created sort of a time line of what we wanted to
14 accomplish, what we needed to do and what kind of time
15 frame we were looking at.

16 And our goal was to come to the March Policy
17 Commission meeting with some recommendations for the
18 Policy Commission members to vote on with the thought
19 process being that if we're going to make
20 recommendations on phase-out issues, we needed to do it
21 by the end of March in order for it to be, you know,
22 effective down at the legislature.

23 So basically that's what we worked on for the
24 last month or so. We started out by identifying
25 different stakeholder groups that we thought we wanted

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1 to get input from. We created surveys for the
2 insurance industry for state associations that, you
3 know, represent the regulated community, and then we
4 created a separate survey as well for state
5 administrators, basically in the states that the
6 Department had looked at because they had phased out
7 their funds.

8 So those were all created and Al Johnson sent
9 those out for us electronically. It was just a, you
10 know, simple, a simple, one-page survey to try to get
11 some more data for us to use in our analysis to kind of
12 look at how Arizona would be impacted by a phase-out
13 and to try to learn if there's anything we can, you
14 know, do to sort of prevent some other pitfalls that
15 maybe some of the other states encountered.

16 Unfortunately, our response from those surveys
17 was not incredible, to say the least. We heard back
18 from a few of the state administrators for the states
19 that have phased out. We've heard back from the
20 Arizona Petroleum Marketer's Association, their
21 members. We didn't hear back from a lot of the other
22 sort of regulated association members in Arizona. We
23 heard back from some of the marketers in other states
24 where the fund has been phased out.

25 And then in the insurance side, we really only

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1 got one company that responded back to the survey.

2 And That was the initial response. The
3 following meeting in the interim, I made calls to try
4 to get a better turn-out for the surveys, and again,
5 nothing. So unfortunately we were a little limited in
6 what we got back from the insurance companies and, you
7 know, and others.

8 So with that in mind, basically, you know, the
9 group, the financial subcommittee, we looked at all the
10 issues that we could think of that could occur. We
11 basically went off of, you know, the process of an
12 eligibility phase-out, and then we also looked at the
13 phase-out of the fund overall and the phase-out of the
14 SAF tax and then, you know, talked about what kinds of
15 issues around those would impact the regulated
16 community and the State.

17 So basically what came out of that are these
18 recommendations. And everyone should -- there were
19 copies over there. So basically it was three
20 recommendations we came up with. And I'll read the
21 recommendations. We had -- bullet points are under
22 each of the recommendations, and they represent some
23 concerns that were raised by the financial subcommittee
24 members in relation to those recommendations.

25 And I'll just kind of preface it with, I'm not

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1 sure that all of these concerns are going to be
2 addressed statutorily, but I think that if all the
3 parties involved agree to work together that they can
4 be addressed, perhaps, in a rule-making process or
5 through the Policy Commission subcommittees.

6 But the first recommendation is basically just
7 a reiteration of what the UST Policy Commission
8 recommended, I think it was back in November, but that
9 we, again, support efforts to insure SAF primacy for
10 owner-operators, and I put in there for up to the first
11 500,000 because that's what the legislature's looking
12 at right now. That just kind of narrows it a little
13 bit compared to what our November recommendation was
14 which was just to restore SAF primacy.

15 The second recommendation was that we support
16 fixed dates for SAF eligibility phase-out and deadlines
17 for submitting applications related to that work. And
18 the regulated community doesn't have a problem with
19 setting those fixed dates. I think, you know, there's
20 been a lot of stakeholder process going on at the
21 legislature with the parties and I think that the dates
22 are workable. They are not perfect but they are
23 workable. And the issues were raised under that point.

24 You know, there were concerns about ADEQ's
25 resources. There were some concerns about whether the

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1 private sector, in terms of, like, laboratories that do
2 the testing and stuff, whether there's enough of them
3 that can process the, you know, increase in submitting
4 claims with an eligibility phase-out and with the
5 application deadlines.

6 So there were some good points, I think,
7 brought up during the process, and I think they are
8 points that, you know, we can all work to address.

9 And then the third recommendation has to do
10 with the phase-out of the SAF tax, the funding
11 mechanism. And it's basically that any recommendation
12 related to a phase-out date for the SAF's funding
13 mechanism must include language to insure payment of
14 the SAF's outstanding liabilities incurred at the time
15 of the last application submittal deadline.

16 And basically that just means that we want to
17 insure that owner-operators and tank owners who do the
18 work required of them within the new statutory
19 guidelines are paid for the work that they do; so, in
20 other words, that people aren't penalized for following
21 the new deadlines.

22 And that's -- you know, that is a little
23 different than what's in -- down at the legislature
24 right now. They are talking about an actual cutoff
25 date for the tax and, you know, whether this -- the

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1 group -- the financial subcommittee didn't want to make
2 our recommendations so specific to the bill alone
3 because we felt that we should be looking at the issue
4 from a broader perspective. So that's kind of why it's
5 worded the way it is. And you can see the issues that
6 were raised under that.

7 Basically the committee felt that SAF money
8 should be spent on SAF sites; again, that the
9 owner-operators shouldn't be penalized for complying
10 with the new statutory deadlines and that --

11 The other issue was that if insurance turns
12 out to be unaffordable or not viable within, you know,
13 the time frame of the eligibility phase-out; so, in
14 other words, like, the next two years or three years or
15 whatever, that then maybe the State needs to look at
16 developing an alternative federal financial
17 responsibility mechanism for owners who have financial
18 need.

19 There was also talk of -- some of the other
20 states have created sort of a nonprofit insurance-type
21 mutual fund type thing for owner-operators for
22 insurance. So that's something else that can be looked
23 at.

24 So I'll open it up. I don't know if people
25 have some questions about the process. I know that

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1 there are some other outstanding issues. I kind of
2 melded together points A and B. I kind of skipped
3 ahead to B. Sorry.

4 But some of the other issues that were kind of
5 talked about during the process had to do just a lot
6 with the way in which the agency would be processing
7 claims and could there be potential problems there
8 where, you know, claims are not processed in a timely
9 manner, you know, and yet you have these strict dates,
10 you know. You could end up with obvious problems.

11 And I understand there was some discussion at
12 the last Policy Commission meeting about risk-based
13 closures and the fact that that software is not really
14 available yet. There may still be some concerns about
15 how owner-operators can use space closures and whether
16 that'll end up having an affect on phase-out.

17 And then I also just heard too that the
18 technical subcommittee has been talking about LUST
19 assignments. And I guess there's some concerns by some
20 of the regulated community that LUST numbers aren't
21 being, given out, I guess, as quickly as they ought to
22 be. So I'll just open it up. I think we can discuss
23 some issues further if you want.

24 CHAIRPERSON CLEMENT: Mr. Beal.

25 MR. BEAL: Yes. Well, I'm not able to attend

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1 those meetings, but you did a real good job on the
2 survey. And I'm sorry you didn't get the information
3 back. Your recommendations are fine.

4 At the last meeting I was kind of listening to
5 the risk-based assessment issue, and the thing that I
6 keyed on more than the fact that the software isn't
7 ready was the fact that the data to characterize the
8 sites wasn't adequate that had been submitted with the
9 risk-based closures and very few had proceeded which
10 made me think, as an owner-operator, that really
11 they're asking for more information from my site in
12 order to do a risk-based closure on it which means more
13 expenses that weren't planned.

14 I have concerns when you look at sunseting
15 the funding mechanisms that have allowed me to be in
16 the business as long as I have with the fact that the
17 information that you want from me or the work that
18 needs to be done isn't complete nor is the task defined
19 to be complete.

20 The impact of chemicals of concern, the
21 complete impact is not known yet. How much is it going
22 to take? Are you going to ask me to do an MTBE? And
23 if so, what's it going to cost? And yet you're
24 starting to think in terms of removing the financial
25 mechanism that allows me to remain active in the

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1 process.

2 So when I think -- when we define what it is
3 we're trying to do, then I can tell you when it's
4 complete and I can tell you when the money is finished.
5 But if we keep evolving the problem which is a natural
6 process to make it better, we have to keep our options
7 open in terms of the finances. Yes, we may have
8 projected an end to this fund in 1999, but it didn't
9 prove to be adequate. So it got extended.

10 Now we're looking at a future date, but the
11 things that we were looking at ending in '99 are not
12 what we're ending today. And tomorrow we're going to
13 see even more. And as we transist to the risk-based
14 closures, things we don't know about are going to
15 become evident and we may need those funds.

16 So I think it's -- we have the mechanism to
17 continue to do the work until we get the job done
18 right, whatever that ultimately ends up being defined
19 as. But until we have defined it, we should not
20 eliminate the fund. And I would not recommend that we
21 close it or sunset it until we know what we're doing.
22 Thank you.

23 CHAIRPERSON CLEMENT: Thank you, Roger. Any
24 other comment regarding -- or questions for Andrea?

25 MS. MARTINCIC: I'm just going to reiterate on

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1 Roger's points about the federal financial
2 responsibility issue. I just want to make it clear, I
3 added a bullet under that first point about primacy is
4 that -- I mean, I think everyone needs to be aware and
5 the Agency pointed this out and I think it's valid, a
6 very valid point that needs to be reiterated, but
7 owner-operators are still required to meet federal
8 financial responsibility requirements.

9 And even if a bill at the legislature were to
10 go through which gives primacy to owner-operators,
11 right now they are talking about it up to 500,000.
12 Depending on how many tanks an owner-operator owns,
13 they would still need, perhaps, another federal
14 financial responsibility mechanism to meet that
15 requirement.

16 So just because we're talking about allowing
17 the first 500,000 to be primary owner-operators, it in
18 no way indicates that owner-operators don't have to
19 meet that federal financial responsibility requirement.
20 And there's also the third-party liability requirement
21 as well that needs to be met. So that -- just to
22 clarify that issue.

23 CHAIRPERSON CLEMENT: Andrea, in your
24 financial subcommittee discussions, was there a general
25 consensus behind each of these three bullets by the

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1 participants?

2 MS. MARTINCIC: I think so. I think the
3 Agency was a little concerned about the third
4 recommendation in terms of the tax phase-out.
5 Initially we had it worded a little differently, and I
6 didn't really get a real sense on whether they
7 supported the way this is worded.

8 Basically it's just saying that if, you know,
9 you have submitted your applications for work done up
10 to that application deadline, the tax needs to be there
11 to pay up the liability of the fund up to those dates.
12 And the way current legislation is written right now,
13 the tax goes away at that date whether or not people
14 are paid for the work they have done or not.

15 There is also -- in one of their earlier
16 meetings, the Agency had been asking for an extension
17 of the SAF tax to go to WQARF, the WQARF program. And
18 initially that recommendation, we were going to have it
19 say that, you know, we didn't want any money going to
20 WQARF, and the Agency did not agree with that, and so
21 that's why that recommendation was tweaked a little
22 bit.

23 CHAIRPERSON CLEMENT: Could I just respond a
24 little bit to what Roger -- I think that what you're
25 saying, Roger, is here's one example of an outstanding

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1 issue that -- risk assessment. Just take that as a
2 stand-alone, that we do not yet understand as a
3 regulated community what needs to be done to satisfy
4 the agency and the program.

5 And, therefore, we can't anticipate what our
6 expenditures are going to be or when they are going to
7 be necessary. And there might be an opportunity, I
8 think, perhaps, and I haven't talked to Hal about this,
9 but through the technical subcommittee to, number one,
10 identify and make sure we have an understanding of,
11 what are the outstanding issues that will affect
12 funding mechanisms and phase-out?

13 And one, obviously, is the risk assessment.
14 We have delayed that full discussion until the April
15 meeting because of staffing. But are there other
16 issues that we think will be very significant relative
17 to owners and operators that haven't been resolved that
18 could affect this Commission's understanding of a
19 phase-out date?

20 MR. BEAL: Well, I agree and I think that's
21 true, but the point is not so much that there was a
22 problem with risk assessment. The point is, a month
23 ago there was no problem with risk assessment and there
24 was no need for money. And things evolved, and all of
25 a sudden we have this apparent need now. And we

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1 haven't had this discussion, just conjecture on my
2 part, that inadequate data means that more money's
3 going to be sent to get data from sites that have
4 already been characterized in order to use a risk-based
5 closure.

6 And that's a fear, I think. I could be wrong,
7 you know. We're not -- it's just an example of, a
8 month ago we didn't have a financial need in this area
9 and now we do. And the ones that we don't know about
10 that are going to come, we don't know about. But the
11 way the program has been running, there's always a need
12 for money.

13 MR. O'HARA: If I just could clarify what
14 Roger's saying. It seems like his situation is more
15 related to the issue of phasing out the fund itself and
16 not necessarily to phasing -- or setting an eligibility
17 phase-out date because, if I understand what we're
18 recommending, if we set an eligibility phase-out date
19 here in the future, his site's already been released.
20 It's already eligible. So that phase-out eligibility
21 would not affect that situation.

22 Are you more concerned about phasing out the
23 fund of the tax and not having adequate funding to
24 cover your situation?

25 MR. BEAL: Well, both. When you can tell an

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1 owner-operator -- I believe in you telling me the rules
2 of the game and I'll elect to play it. But so far we
3 haven't had real defined rules of the game put forward.
4 I mean, it seems to be changing. We add chemicals. We
5 add requirements along the way that somebody that even
6 gets into the business today can go state of the art,
7 and the next thing you know, we've got an environmental
8 requirement that wasn't foreseen that is going to be
9 devastatingly impactive to them.

10 So it's both sides of that question. And I
11 only had the example, the site characterization/risk
12 assessment as it came up last week. I mean, it just
13 kind of laid itself out there on the table and it was
14 easy to talk about.

15 But because the ongoing requirements change,
16 we say, well, I guess we need to have you look at MTBE
17 or, you know, whatever else is going to come along
18 next. I mean, it's one thing after another that a
19 business person has to factor in to their choice to do
20 business. I would love to have a defined set of
21 requirements that is unchanging.

22 But as long as the expense is so high, then I
23 question even the eligibility cutoff date because you
24 don't know what you're doing today. It's there. I'm
25 not sure that -- it's a valid point, but it's certainly

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1 something that I think needs to be considered because
2 when things just change on an industry basis, they can
3 have major impacts. And unfortunately what becomes
4 even more inequitable is the smaller people have to
5 take on the role of paying for insurance rather than
6 being self-assured across the broad spectrum. That
7 eliminates the potential for a viable business. You
8 know, things like that just go on.

9 So, yeah, business is business, you know. I
10 can take it. Just tell me what the rules and we'll go
11 after it. That's why it's sort of both. Eligibility
12 is certainly part of it. Phase-out for the projects is
13 even more a part of it. And here we are talking about
14 policies and environmental policy and operation of it
15 and we're having a look at doing away with the very
16 money that makes it all possible. It's a little logic
17 problem I have.

18 CHAIRPERSON CLEMENT: Thank you. Mr. Smith.

19 MR. SMITH: I understand Roger's concern. And
20 let me say something to the second part of that, the
21 chemicals of concern. You know, I think we will always
22 have chemicals of concern and there may always be new
23 ones out there. I mean, we can't keep worrying about
24 the future. We just have to take a stand at some point
25 in time and, you know, handle the future when it comes.

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1 But so far as the risk assessment, I think what you may
2 be alluding to, Roger, is that unless you do a risk
3 assessment, you really don't look at other parameters
4 or analyses that are tailored or needed for risk
5 assessment which aren't in the normal world of UST
6 cleanups. It's another set of parameters and analyses
7 that you need to complete a risk assessment.

8 They have always been there. It's just that,
9 I don't think we have used them or the State hasn't
10 required a risk assessment on a lot of sites that you
11 would become familiar with all those other types of
12 analyses that go into a risk assessment.

13 So I don't think there are new parameters. I
14 don't think there are new sampling techniques. I think
15 they have always been there. It's just that we haven't
16 used them or haven't been required to use them at this
17 point.

18 MR. BEAL: And I'll come back and say, yes,
19 but we didn't need to until we started to do risk
20 assessment and we started sending things in only to
21 find out that everything -- practically everything.
22 Theresa got one through -- has been sent back for more
23 information.

24 And to me that means that it's just a natural
25 change in the way that things are going on, but it also

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1 means that somebody's going to want more wells, more
2 information about sites that weren't captured because
3 risk assessment wasn't one of the options that we had
4 when the assessment was done in the first place. And,
5 therefore, we're going to need more money. And I don't
6 know where the end of it is.

7 MR. O'HARA: I think we may be reading too
8 much into the recommendation three. But it seems to me
9 that we're recommending that whatever that liability,
10 that ultimate liability turns out to be, whether for
11 MTBE or extra wells or risk assessment, that we're
12 recommending that we don't phase out the fund itself
13 until those outstanding liabilities are paid for. Is
14 that my --

15 MS. MARTINCIC: That's correct.

16 MR. O'HARA: So whatever new things come up,
17 we're saying it should be covered.

18 MS. MARTINCIC: Although we are -- where I
19 think Roger's point could be affected in the second
20 recommendation is the deadlines for submitting
21 applications for work. So depending on when those
22 dates would be set, were set, if the Agency were to
23 come back, say, a month before that deadline and say,
24 we need XYZ now for owner-operators if you're site was
25 closed risk based or -- I don't know, whatever kind of

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1 scenario could occur, but that's where I could see
2 maybe what Roger's --

3 MR. O'HARA: Or even afterwards --

4 MS. MARTINCIC: Right. By then the deadline
5 for submitting applications would have come and gone
6 and you wouldn't be able to get reimbursed for the
7 work. So I mean, I think there's a valid point there
8 with that. But you're right. The third recommendation
9 is that all liabilities up to that, up to those
10 application deadline dates should be paid, that the tax
11 shouldn't go away until the work's paid for. So then
12 you get into a question of when you set those
13 application deadlines.

14 CHAIRPERSON CLEMENT: I mean, if we who have
15 been involved in programs for a long time know that
16 it's always an evolving state-of-art slash technical
17 analysis, but there are some outstanding issues in this
18 program that we are aware of now that I think could be
19 addressed up front so that the regulated community has
20 a better understanding if there's going to be any
21 existing issues, they're are going to get, you know,
22 per Roger's concern.

23 And my suggestion would be is that we use the
24 mechanism of the technical subcommittee to identify
25 those issues. We already know that risk assessment is

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1 a major one. I mean, I don't think we need to do that
2 through the technical subcommittee. We have asked DEQ
3 to be prepared for the April meeting to give the full
4 Commission a much better understanding of where they
5 are and where they are going and when that's going to
6 happen so that the regulated community is informed.

7 But there are other outstanding large picture
8 issues that I think the agency has been working
9 constructively towards addressing. But we haven't
10 gotten there. And I'd also suggest that we use the
11 technical subcommittee to identify those issues and to
12 massage them before the next Policy Commission meeting
13 if that would be something, Hal, that you think would
14 be productive.

15 MR. GILL: Yes. I mean, that's why we asked
16 at the last meeting for DEQ to provide us the problems
17 that they were having with risk assessments because
18 the -- Ren Willis, at the last meeting, mentioned that
19 a number of the risk assessments were inadequate, but
20 none of us really understood what it was in risk
21 assessment that caused them all -- you know, why were
22 they inadequate?

23 And that's what she was supposed to provide.
24 So if she can provide that prior to the next
25 subcommittee, then we can discuss it and bring a

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1 better, you know, discussion to the Policy Commission
2 because that goes right along with what Roger's
3 concerns are. We don't know what it is in the risk
4 assessment that is not being provided.

5 And the bulletin, or however you want to
6 present it to the regulated public, is that we need to
7 get that information out so they can start putting in
8 the correct data and/or know that they have to get more
9 data which is another thing.

10 We do not know, based on the discussion last
11 time, if there's more data that needs to be collected
12 or if the data's being presented wrong or what. And
13 that's what we're really asking for.

14 CHAIRPERSON CLEMENT: So do you think it would
15 be functional to have the technical subcommittee
16 address risk assessment and then come to the Policy
17 Commission, or should we have risk assessment be just a
18 stand-alone for the next Policy Commission meeting
19 without a technical subcommittee discussion?

20 MR. GILL: I don't know if DEQ can get the
21 data together in time for the next -- which is two
22 weeks from today. So I mean, I have no problem
23 discussing it and being prepared for a more in-depth
24 discussion at the next meeting, but it depends on
25 whether they can, you know, come to the technical

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1 subcommittee meeting or not.

2 CHAIRPERSON CLEMENT: Could we also add an
3 agenda item on the next technical subcommittee to at
4 least identify and frame any other large-picture
5 technical issues that remain unresolved that could
6 affect this larger issue of eligibility -- not
7 eligibility but basically fund phase-out and not having
8 the owners and operators understand at this point in
9 time or in the near future what's going to expected?

10 MS. MARTINCIC: And part of that during a
11 stakeholder process on the bill, I think at one point
12 there was something in there about the SAF or -- well,
13 about rule writing in association with phase-out and
14 identifying those issues. Is that correct, Shannon?

15 You know, if the bill were to go through with
16 the phase-outs, it would require rule writing,
17 obviously, for various parts of the bill. And I
18 believe that the stakeholders had agreed that some of
19 those technical issues -- we were hoping, anyway, that
20 some of those technical issues could be addressed
21 during the rule-making process. And I think there was
22 a deadline given for it, when the Agency needs to do
23 those rules. I think it was '98 or, I mean, sorry,
24 2008, I think, or something like that.

25 There's a liability study too where we asked

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1 the Agency to be able to assess all of the liabilities
2 after those application deadlines. That's a separate
3 study. But I thought there was something in there
4 about rule writing as well.

5 I could be wrong. I don't know. At one point
6 there was because we -- I mean, the stakeholders,
7 through this process, have, you know, brought up a lot
8 of these same concerns and issues in terms of the
9 process and, you know, what kinds of things are going
10 to have to be looked out, you know, with phase-out
11 dates in place statutorily. So it's on everybody's
12 minds, just finding the best way to set it out.

13 MR. BEAL: I mean, just one concern I would
14 have, and it's not that I'm arguing for or against it.
15 Maybe I am. Are we missing the time frame to have an
16 impact here by continuing the discussion? We have
17 raised some issues, and obviously they go to phase-out,
18 and of course then there's the question of eligibility
19 and what position we would have on this as the
20 legislature is acting.

21 We can't study -- this isn't an issue that we
22 can study. It's an issue, I think, that we're trying
23 to have a position on to guide the legislation. And so
24 it's not an argument about risk assessment or the
25 problems involved with it. It's an example of why we

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1 might still need the money. Eligibility is something
2 that maybe we can set a time frame to.

3 My arguments or my comments have been solely
4 to go to the question of, yeah, we can eliminate the
5 fund or maybe we should not eliminate the fund based on
6 the way the program is developing. And if we talk
7 about it too long and try to be fair to everybody, we
8 may miss the opportunity to be effective with our
9 comments. And that's the point. It's not risk based.
10 I'd love to know what's wrong with risk based or what
11 doing and we're not doing and how it's going to go, but
12 that shouldn't affect our position on the fund or the
13 concept it. I think that's where I'm at.

14 MS. MARTINCIC: I don't think it's too late to
15 affect that issue of an actual overall phase-out of the
16 SAF mechanism with the tax. I mean, you know, whether
17 the legislature politically will agree with whatever
18 position we take, that's another story, and it depends
19 on whose going to carry that water too. So, I mean, I
20 don't think it's too late, though, because --

21 MR. O'HARA: I just want to clarify. When you
22 say too late, you mean if we make a recommendation
23 today or if we wait until April to make a
24 recommendation?

25 MS. MARTINCIC: We have to vote today, I

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1 think, to make our recommendation for it to have an
2 impact. So to Roger's point, I think what Roger was
3 asking, is it too late even now to make a
4 recommendation? And I would argue that, no, I don't
5 think it's ever too late. I mean, I guess I'm an
6 idealist that way. When it comes to a political
7 process, I think one person can make a difference.

8 But I think, you know, if we want to take a
9 stand and say something differently from what is being
10 said out there, I think we ought to do it. And that's
11 why the third recommendation is worded the way it is to
12 suggest that, you know, until the liabilities are paid
13 out, there should not be a phase-out of the tax.

14 Now, whether we want to tweak that wording or
15 you don't feel it's not strong enough or --

16 MR. BEAL: No. It's covered --

17 CHAIRPERSON CLEMENT: I think you said, Roger,
18 it looked like it was covered, your issue was covered
19 here.

20 MR. BEAL: Yes. The recommendations that have
21 been presented by Andrea are adequate for my concerns.

22 CHAIRPERSON CLEMENT: Any other discussion or
23 questions for the financial subcommittee? Do we, as a
24 Commission, want to propose that we make a
25 recommendation for -- and I believe what you're

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1 suggesting, Andrea, is that we look at these that are
2 written in bold, one, two, three, and that the bullets
3 underneath them are basically discussion items but what
4 we would be recommending are the bolds?

5 MS. MARTINCIC: Right. And I would just make
6 that further -- I'll just throw out as well to maybe
7 address Roger's concerns even more adequately, we could
8 always even add a sentence in there or something that,
9 you know, the Policy Commission feels that further
10 research needs to take place before an overall SAF
11 funding mechanism phase-out takes place.

12 I mean, you know, if we feel that we didn't
13 get the kind of -- you know, I personally don't feel we
14 got the kind of input that I would have liked to have
15 seen from the insurance companies and from other states
16 just in general. But, you know, when you're trying to
17 do it in a month, it's kind of hard.

18 So I mean, we could always make that
19 recommendation as well, that we feel further research
20 should take place or recommend that the legislature
21 should create some kind of study committee to further
22 research the tax phase-out or whatever. There's lots
23 of different ways to handle it, but that would maybe
24 just add a little bit more emphasis to your point that
25 there's still so many unknowns.

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1 CHAIRPERSON CLEMENT: I have not been at all
2 close to the legislative process. It's my
3 understanding, the legislature is very committed to
4 putting firm dates in terms of eligibility and
5 phase-out. Is that a correct --

6 MS. MARTINCIC: Well, do you mean the House or
7 do you mean the Senate or do you mean --

8 CHAIRPERSON CLEMENT: I'm just asking a
9 question. I don't know.

10 MS. MARTINCIC: There have been some. I would
11 just say, I guess, that there are some legislators that
12 have been very adamant about having specific dates.
13 Now, whether or not still having a specific eligibility
14 phase-out date and application deadline dates would be
15 enough with some kind of strong language that, you
16 know, the legislature's in charge of researching some
17 kind of phase-out funding mechanism, you know, that
18 will all have to be meted out of there.

19 I don't know if that would be -- I don't know
20 that -- you know, I think we should make the
21 recommendation based on what we feel is the most sound
22 recommendation. I don't know that we should
23 necessarily worry about whether or not they are going
24 to agree with it or not.

25 But there have been some legislators that have

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1 raised concerns about phasing the tax out in the time
2 frame that exists in the current bill and concerns
3 about, you know, is that going to be enough -- will
4 there be enough money in the fund to pay out, you know,
5 the work being done? And so those concerns have been
6 raised by legislators as well.

7 MS. DAVIS: If I could just articulate the
8 Agency's position and speak a little bit to legislation
9 even though we're not on that agenda. It's just an
10 extra point. The first piece, just about
11 legislatively, Representative Farnsworth has really
12 moved this bill through the House. And his bottom line
13 position is he will run the primacy issue making SAF
14 primacy, but that has to be coupled with a definite
15 phase-out of the fund.

16 And so far that has been his immovable
17 position. And of course there's many more innings of
18 this ball game to be played, so I won't speak to the
19 end of it. But that has been why he has been working
20 so hard to moving that. Now, on the Senate side -- and
21 it is now headed to the Senate. It's been passed out
22 of the House.

23 On the Senate side, Senator Allen is
24 co-sponsoring that bill. So I imagine that there will
25 be some flexibility with that bill, but if the

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1 representative whose done all the work to get it to the
2 Senate side, if his going-home piece isn't in it, I'm
3 not sure that it will go anywhere. And at that point,
4 to keep everything in the game, like the SAF primacy,
5 it would need to be a striker.

6 So that's how that process would work. And
7 we're barely halfway through it and there's still lots
8 of time left. And so I just kind of wanted to clarify
9 where that is. You know, quite frankly, I don't think
10 a striker's out of the question at the end game for the
11 primacy issue.

12 And I want to speak directly related to the
13 financial subcommittee recommendations. I will be
14 abstaining, and I want to wrap this little complex
15 thing in one piece so I stay consistent with the Agency
16 position. And the Agency is absolutely, completely
17 supportive of one and two but they have to be wrapped
18 together.

19 If there's primacy -- if the SAF becomes the
20 primary mechanism of reimbursement up to a half a
21 million dollars, then we say there has to be an
22 eligibility cutoff date. So I just want to make really
23 clear that the Agency supports one and two but they
24 have to come together as a package.

25 The third thing is a concern for the Agency as

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1 well because when we -- if the funding is repealed, as
2 Representative Farnsworth has pushed, then it puts the
3 agency in the position that it found itself in when
4 this program was created. What do we do with the
5 orphan sites? And that's a big concern to us in
6 addition to the regulated community's concern.

7 What about if we turn -- what if we turn an
8 application in on time and it's approved but there's no
9 money to have it paid for? So when Farnsworth came
10 forward with, we're going to phase this tax out, which
11 wasn't part of one and two, the Agency said, you've got
12 to give money to WQARF which is the program of last
13 resort so that we have the ability to take care of
14 orphan sites.

15 So again, the Agency is very much in favor of
16 one and two tied together but we can't support how it's
17 written on number three, and I don't think it's germane
18 that we go into that right now. I mean, there would
19 need to be tinkering with an SAF site. If something's
20 not an SAF site when this is phased out, an orphan site
21 still needs to have money to be cleaned up if it
22 threatens a receptor.

23 CHAIRPERSON CLEMENT: Just a follow-up
24 question, and I'm sorry for interrupting. If you took
25 out the bullets under number three and you just had the

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1 language, is there anything specific to the number
2 three language that the Agency would like to address to
3 the Commission?

4 MS. DAVIS: Madam Chair, what the Agency has
5 been pushing is, if there's a drop-dead date to pay the
6 claims, then the agency wants to make sure that there
7 is a funding source available to clean up any high-risk
8 contamination. We haven't taken the position, per se,
9 on number three, like, how that would work, how that
10 specifically would work. We haven't addressed that
11 specifically.

12 MS. MARTINCIC: Shannon, would the agency
13 still support points one and two if the deadlines for
14 submitting applications were deleted off of two,
15 because I believe that the application deadlines for
16 submitting work were related specifically to the tax
17 phase-out. So, in other words, if primacy were just
18 linked with the eligibility phase-out.

19 MS. DAVIS: I'm not understanding. Tell me
20 what you would take out again, Andrea. I'm not
21 understanding it.

22 MS. MARTINCIC: On the second recommendation,
23 it would just say supports fixed dates for an
24 eligibility phase-out period, because I think if the
25 Commission doesn't want to address phase-out of the

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1 tax, then we don't need to have application deadlines
2 as a supporting recommendation as well. And I think
3 that would also help address some of Roger's concerns
4 about, you know, some of the process concerns that have
5 been addressed.

6 MS. DAVIS: Madam Chair, Andrea, let me see if
7 I have it right. So what we would support is the SAF
8 eligibility cutoff date? Is that what you're saying
9 rather than --

10 MS. MARTINCIC: A fixed date for an SAF
11 eligibility phase-out period with the SAF primacy
12 issue. So, in other words, just cross out "and" to the
13 end of the sentence. It's just basically -- I think
14 what you were saying is that the agency supports SAF
15 primacy with an eligibility phase-out date attached?

16 MS. DAVIS: Correct.

17 MS. MARTINCIC: And I just wanted to clarify
18 that it's -- the eligibility phase-out date and that
19 the deadline for submitting applications, those dates
20 were really more tied to the phase-out of the tax.

21 And so I think those were issues. I think the
22 application deadlines were tied in with some of Roger's
23 concerns as well. And so I guess I'm just wondering
24 right now just, you know, on the fly right here
25 listening to everybody's comments, if we were to do

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1 that and we had the agency supporting that, we could go
2 with the Policy Commission recommendation that the
3 agency supports as well.

4 CHAIRPERSON CLEMENT: And we recognize you're
5 not going to vote, Ms. Davis, but I see where you're
6 going is, if we could get the Policy Commission and in
7 agreement with the DEQ, even though you're not going to
8 vote on this, it would certainly have a little bit more
9 substance.

10 MS. DAVIS: The Agency supports the primacy
11 coupled with the SAF eligibility cutoff. You're using
12 phase-out. So the cutoff date. And that was in the,
13 what we referred to as the Davis to Pierce letter where
14 we responded to the round table and that was very clear
15 in there.

16 Now, just because to be precise is important
17 in this case, we have also committed, you know, in the
18 negotiation process to the eligibility cutoff dates in
19 existing legislation. And that would be '06 and '08.
20 We have never been able to negotiate the bill without
21 the phase-out of the tax on the table. So we have
22 never even taken that separately from the phase-out.
23 So the agency has supported the specific dates that are
24 proposed in the bill of '06 and '08.

25 MS. MARTINCIC: With '06 being the eligibility

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1 cutoff date for owner-operators in 2008 for volunteers?

2 MS. DAVIS: That's what we have on record.

3 Andrea, does that -- am I being -- have I answered it?

4 MS. MARTINCIC: Yes, I think so.

5 MS. DAVIS: That's real consistent with the
6 letters that have gone out even prior to the whole
7 deal. So yes.

8 MS. MARTINCIC: Leon, do you feel that your
9 speaker slip is related to this discussion or do you
10 want to wait and do it later?

11 MR. VANNAIS: I'll wait until the end, if
12 that's okay.

13 MS. MARTINCIC: Okay. Great. Does anyone
14 else have any thoughts about whether we want to just go
15 with these or if we want to kind of alter it?

16 MR. O'HARA: Just a general comment.
17 Recommending an eligibility cutoff date is a very big
18 step, not only for the Commission but for the
19 legislature in the state. It's something -- we're
20 recommending an eligibility cutoff date. It's
21 something the Commission was charged with in the
22 inception going back five, six years ago, and we have
23 never really had support and success doing it.

24 What we've done -- we're at that point where
25 the legislature seems to be at that point. And that's

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1 fairly easy to do, just to set an eligibility cutoff
2 date and then setting a date at which claims coming in
3 beforehand would be accepted into the fund and those
4 afterwards would go to private insurance.

5 Taking the next step, to say that the fund
6 itself, trying to determine what the ultimate amount of
7 money would be and how long the tax should go on is
8 really difficult to predict. I mean, you don't know
9 how many claims are going to come in under that
10 eligibility cutoff date and therefore how much the
11 liability will be and therefore project what the tax
12 will be.

13 And it's so difficult to try to tie these two
14 together that I don't know why the legislature is
15 trying to do both at once. I think they are asking for
16 a lot of trouble because when you set a date in stone
17 to take the funds away, it may not be enough. It
18 probably won't be enough.

19 So I feel comfortable going to an eligibility
20 cutoff date, but I wouldn't want to try to estimate
21 when that fund is going to be phased out.

22 MR. BEAL: And maybe that should be our
23 recommendation. I'm hearing -- I agree with that
24 statement. I mean, we can send an eligibility date for
25 the fund, but in terms of the fund itself, maybe

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1 Shannon can clarify, but I thought that she was saying,
2 how are we going to pay for the things after the fund
3 goes away, indicating that there's going to be a need
4 for money. And unfortunately it also means that
5 there's going to a need to acquire that money which is
6 what the fund does.

7 So I don't think anybody is prepared to look
8 at a total phase-out of the fund. But certainly an
9 eligibility date, maybe our recommendation should be
10 just one and two and leave it that we don't recommend a
11 cutoff date.

12 MR. O'HARA: I think even shortly after having
13 the eligibility cutoff date, you'll have more
14 information within a year or two to make a good
15 determination as to what the fund cutoff date should
16 be. And instead of being silent on the issue of a fund
17 eligibility cutoff date, we might ought to take a stand
18 and just say, you know, we think it's premature. The
19 first step's important to move forward, but let's wait
20 until shortly thereafter to make some decisions on the
21 fund itself.

22 MS. MARTINCIC: Well, and so in other words,
23 maybe should we tweak the third recommendation to say
24 that -- and I mean, you know, at this time we do not
25 recommend a specific date for phase-out of the SAF

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1 funding mechanism. And then do we want to include the
2 language that if a date is imminent, or whatever, that
3 it needs to be linked with, you know, the outstanding
4 liabilities? Do we still want to see that in the
5 language? I think -- I would argue that that needs to
6 be in the language, that people ought to be paid for
7 the work that they have done within the statutory
8 guideline.

9 MR. O'HARA: I think it also needs to include
10 the thing that Shannon's talking about because you're
11 still going to have regulatory funding for DEQ, you
12 have orphan sites. I almost just want to say we
13 recommend not setting a phase-out date for the fund
14 itself until --

15 MS. MARTINCIC: Would we be comfortable saying
16 that there should be a study committee to look at it
17 and make a specific recommendation in another couple
18 years or something?

19 MR. O'HARA: I think there's going to be a lot
20 of unintended consequences by setting a phase-out date.

21 CHAIRPERSON CLEMENT: I think it's really
22 important that we at least list some of the outstanding
23 issues that we feel are unresolved and why we are
24 recommending a specific -- or if we choose to do that
25 why we would recommend a specific fund phase-out date.

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1 And then I also agree that we should -- there has to be
2 a mechanism. If these issues are going to be
3 addressed, there has to be a mechanism to analyze those
4 issues and the fund liability. And I think we also
5 should say something about a committee or a study or
6 something of that nature.

7 MR. BEAL: One thing that'll happen with the
8 eligibility is that the insurance companies won't be
9 responding. You know, at that time you're going to
10 have reality to deal with. You'll still have your
11 funding mechanism available should it be disastrous.
12 Those things you're not going to know until reality
13 drives it. I mean, they are not responding to surveys.
14 You're getting all kinds of different stories from
15 other states, what the insurance rates did, what the
16 impact on the industry has done.

17 And I also would have to comment that if we --
18 on number three, if we do anything but say that we're
19 not in favor of a phase-out date, then we compromise
20 that comment with anything else that goes to it,
21 meaning, like, we don't want to recommend a phase-out
22 but if you go ahead and do this, here's the actions
23 that we want to have taken as opposed to saying, we
24 don't think you should do it.

25 MS. MARTINCIC: Right. But do you think

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1 saying -- do you think saying, though, that we think
2 that it should be studied further is a problem to try
3 to gather the data that needs to be gathered to really
4 analyze it more properly instead of in three meetings
5 over a month?

6 MR. BEAL: Yeah. If I were to write it right
7 now with just -- after this meeting, I would say, I'm
8 not recommending a phase-out date for the SAF and
9 believe that after the eligibility cutoff date a more
10 accurate picture of the phase-out requirements will be
11 known. I mean, that's kind of where it is. It's not
12 what I -- you could send it up there. But that's
13 what's going to happen.

14 Once we do the eligibility, you're going to
15 know with much more certainty when you can be phasing
16 out the fund. Until reality strikes, you're not going
17 to be able to do it.

18 CHAIRPERSON CLEMENT: Any other comments or
19 discussion? Ms. Davis.

20 MS. DAVIS: Yes. Madam chair, I think it's
21 important or it would be helpful, if there are the
22 outstanding concerns. I mean, we talk about, we have
23 no idea what's going to happen once the fund, the
24 eligibility is sunsetted.

25 If you can articulate those two or three or

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1 four reasons why, you know, imagining the impact rather
2 than saying, it's unknown, it could be catastrophic.
3 But if you could say why, this is going to be important
4 information, I think, from the Policy Commission for
5 the legislators to see. That's just my recommendation.

6 CHAIRPERSON CLEMENT: That's a good point. I
7 think the first one is the total fund liability will
8 remain unknown until phase-out of eligibility. I think
9 that's the bottom line.

10 MS. MARTINCIC: Now, is compliance really
11 wrapped up in that because I believe Ron said
12 compliance doesn't really receive SAF funds. Is that
13 right? Compliance. For UST compliance, is that
14 wrapped into SAF funding? Because I thought you told
15 me last meeting it was not.

16 MR. KERN: No, it is not. The UST inspections
17 compliance program has no SAF funding.

18 CHAIRPERSON CLEMENT: I think the other one
19 that Shannon mentioned was funding to address orphan
20 and would it be UST sites?

21 MS. DAVIS: Uh-huh.

22 MS. MARTINCIC: Is that -- is State lead
23 funded through the SAF, Shannon?

24 MS. DAVIS: In part.

25 CHAIRPERSON CLEMENT: I don't want to put you

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1 on the spot since you're not voting on this.

2 MS. MARTINCIC: Well, what if we had -- this
3 is kind of what I have been writing down here. The
4 Policy Commission is not recommending a fixed phase-out
5 date for the SAF's funding mechanism. And then, due to
6 outstanding concerns regarding UST, total fund
7 liability, orphan sites or funding for orphan sites,
8 those are -- is there some other -- and insurance or --

9 CHAIRPERSON CLEMENT: And availability and
10 cost --

11 MS. MARTINCIC: -- of shifting to other
12 financial federal requirements?

13 MR. O'HARA: I'd make one recommendation.
14 What did you say?

15 MS. MARTINCIC: Does not recommend a fixed
16 phase-out date.

17 MR. O'HARA: Instead of saying that, could we
18 be more forceful and say, we specifically recommend
19 that they do not, that it's premature to set a tax
20 payoff date, because if we say we are not recommending
21 it, it just says we don't really have a feeling, that
22 we're not too strong --

23 MS. MARTINCIC: So the Policy Commission
24 recommends that --

25 MR. O'HARA: Maybe any fund cutoff date, or

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1 whatever you want to call it, is premature due to the
2 following --

3 MS. MARTINCIC: That a fixed phase-out date
4 for the SAF is premature.

5 MR. O'HARA: We recommend the legislature does
6 not set one because right now it's in there and it's
7 not forceful enough.

8 CHAIRPERSON CLEMENT: Other issues that we
9 would want to -- we have three outstanding concerns.
10 One is the total fund liability is unknown, the funding
11 for orphan sites, and then the availability and cost of
12 shifting to alternative financial mechanisms.

13 Any other major point that we would want to
14 stick in here? I mean, we have the technical piece of,
15 what do we really need to do to get these sites closed
16 but I don't think that goes on this. I'm going to make
17 sure you're the wordsmith.

18 MS. MARTINCIC: Okay. So how does this sound
19 for that third bullet: The Policy Commission
20 recommends that a fixed phase-out date for the SAF
21 funding mechanism is premature and should not be
22 pursued.

23 MR. O'HARA: For reasons such as --

24 MS. MARTINCIC: Well, should not be pursued,
25 period. Then, due to outstanding concerns regarding

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1 UST compliance, orphan sites, total -- or, no. UST
2 compliance is not in there. Sorry. UST total fund
3 liability, funding for orphan sites and the shifting to
4 alternative financial -- federal financial
5 responsibility mechanisms. I guess that would all be
6 one sentence, due to..." It's a long sentence. Does
7 that capture kind of everything that --

8 MS. DAVIS: I'm reminded that responsible
9 parties or owners or operators who refuse to do the
10 cleanup, it's now funded by State lead where our State
11 lead provision says, where they are technical or
12 financially or they are basically incompetent to clean
13 up the site, we go in and do that. So it's not -- it's
14 State-lead funding that's separate from an orphan site
15 that doesn't have an owner-operator.

16 CHAIRPERSON CLEMENT: Can we stick, like, a
17 one word for -- you know, you've got orphan? Is there
18 something, we could just say --

19 MS. MARTINCIC: What? So you'd have to say
20 State-lead? Funding for State lead and/or orphan
21 sites?

22 MS. DAVIS: Yes.

23 CHAIRPERSON CLEMENT: You're not going to get
24 anybody with State lead.

25 MS. MARTINCIC: I mean, isn't it considered an

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1 orphan site at that point?

2 MS. DAVIS: You know what you could put in is
3 orphan or just say high-risk sites because that's what
4 we end up getting, or enforcement cases.

5 CHAIRPERSON CLEMENT: State-funded high-risk
6 sites?

7 MS. MARTINCIC: But you're not even going to
8 vote on this for us?

9 MS. DAVIS: I can if you put number three in
10 here. That's all

11 MS. MARTINCIC: Even with our wordsmithing
12 here?

13 MS. DAVIS: I'd have to hear it again.

14 MS. MARTINCIC: All right. What was he
15 wording?

16 CHAIRPERSON CLEMENT: State-funded high-risk
17 sites. I don't think you want State lead. State
18 funded high-risk sites.

19 MR. O'HARA: You're not wording that to be all
20 inclusive anyway. It's just some examples of --

21 CHAIRPERSON CLEMENT: Right, but these should
22 catch their attention. That's why we should be putting
23 them in there.

24 MR. GILL: What was the third one again?

25 MS. MARTINCIC: Yes. How did you have that

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1 worded, Gail? Shifting to alternative federal
2 financial responsibility --

3 CHAIRPERSON CLEMENT: What I had wrote is
4 availability and cost of shifting to alternative
5 financial responsibility mechanisms, availability and
6 cost.

7 MR. GILL: Because I know one of our big
8 concerns in the meeting was whether or not there's even
9 going to be insurance available.

10 MS. MARTINCIC: Okay.

11 CHAIRPERSON CLEMENT: Do you want to read it?

12 MS. MARTINCIC: I will attempt to. So the
13 first one remains unchanged, the first recommendation
14 being that the UST Policy Commission supports efforts
15 to insure SAF primacy for owner-operators for up to the
16 first 500,000.

17 Recommendation number two is that the UST
18 Policy Commission supports a fixed date for an SAF
19 eligibility cutoff, period.

20 Recommendation number three is that the Policy
21 Commission recommends that a fixed phase-out date for
22 the SAF funding mechanism is premature and should not
23 be pursued due to outstanding concerns regarding UST
24 total fund liability, funding for state-funded
25 high-risk sites and availability and cost of shifting

0050

1 to alternative federal financial responsibility
2 requirements. It's kind of wordy.

3 CHAIRPERSON CLEMENT: Can you repeat the
4 first, the lead-in sentence?

5 MS. MARTINCIC: Yes. For three?

6 CHAIRPERSON CLEMENT: Yes.

7 MS. MARTINCIC: The Policy Commission
8 recommends that a fixed phase-out date for the SAF
9 funding mechanism is premature and should not be
10 pursued.

11 CHAIRPERSON CLEMENT: How about should not be
12 established at this time because we do want them to
13 pursue it and we do think it should be pursued. Let's
14 establish it. And then did we lose orphan sites
15 somewhere?

16 MR. GILL: That's what I thought.

17 MS. MARTINCIC: Oh. I thought you had it
18 saying State funding for --

19 CHAIRPERSON CLEMENT: They're different
20 things, I guess, is what the Agency was telling us.

21 MS. MARTINCIC: So funding for State-funded
22 high-risk sites and orphan sites?

23 CHAIRPERSON CLEMENT: Yes.

24 MR. BEAL: Or State managed.

25 CHAIRPERSON CLEMENT: But isn't it State

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1 funded? I think it is because they manage high-risk
2 sites that owners and operators are responsible for.

3 MR. BEAL: In the sentence saying funding for
4 State -- I'm just trying to say does funding for
5 State-managed sites include orphan sites and any other
6 problem that comes along?

7 CHAIRPERSON CLEMENT: I think they are really
8 separate thoughts. And I know the wording isn't
9 clean-clean, but that's the concept we want to get
10 across. Ms. Foster?

11 MS. FOSTER: Instead of saying "and" in that
12 sentence, let's put "or" because there are orphan tanks
13 that are not State managed.

14 CHAIRPERSON CLEMENT: I get it. Okay. The
15 municipalities may have picked up such as the City of
16 Phoenix.

17 MR. GILL: Can you read that one again,
18 please?

19 MS. MARTINCIC: The full last one?

20 MR. GILL: Yes.

21 MS. MARTINCIC: The Policy Commission
22 recommends that a fixed phase-out date for the SAF
23 funding mechanism is premature and should not be
24 established at this time. Due to outstanding concerns
25 regarding UST total fund liability -- or I guess I

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1 should say SAF total fund liability -- funding for
2 State-funded high-risk sites or orphan sites and
3 availability and cost of shifting to alternative
4 federal financial responsibility requirements for
5 owner-operators? Should I say that?

6 CHAIRPERSON CLEMENT: It's probably intrinsic.

7 MS. MARTINCIC: So does that sound like a
8 mouthful?

9 MR. SMITH: How about one more time?

10 MS. MARTINCIC: All three?

11 MR. SMITH: No. Just the last one.

12 MS. MARTINCIC: The third recommendation is
13 that the Policy Commission recommends that a fixed
14 phase-out date for the SAF funding mechanism is
15 premature and should not be established at this time.
16 Due to outstanding concerns regarding SAF total fund
17 liability, funding for State-funded high-risk sites or
18 orphan sites and availability and cost of shifting to
19 alternative federal financial responsibility
20 requirements for owner-operators.

21 CHAIRPERSON CLEMENT: I think the word is
22 mechanisms rather than requirements.

23 MS. MARTINCIC: Okay. Federal financial --

24 CHAIRPERSON CLEMENT: Because the
25 requirement's already there. It's the choice of the

0053

1 mechanism.

2 MR. O'HARA: One more comment. It may not be
3 necessary because I think I like the way it's worded.
4 Rather than leave it like we feel it should not be done
5 at this time, should we tie up the loop and say that we
6 intend to study that or to make recommendations down
7 the road --

8 CHAIRPERSON CLEMENT: Do we want to recommend
9 that the legislature create a study committee?

10 MR. O'HARA: Or that we intend to do it,
11 something like that.

12 MR. SMITH: I think that's our charge.

13 MR. O'HARA: The Commission intends to monitor
14 and make recommendations in the future regarding this
15 topic, because otherwise it just kind of looks like
16 we're putting it --

17 MS. MARTINCIC: Well, do we feel we can make a
18 recommendation in, you know, a year, two years?

19 MR. O'HARA: We can recommend what we feel is
20 appropriate.

21 CHAIRPERSON CLEMENT: Mr. Smith, you looked
22 like you a comment. No?

23 MR. SMITH: No.

24 CHAIRPERSON CLEMENT: I think if we leave it
25 too open-ended -- I don't know.

0054

1 MS. MARTINCIC: I almost feel like we should
2 have a date that we're going to report back to the
3 legislature our finding or something.

4 MR. BEAL: You're not going to be able to make
5 those recommendations with any more information until
6 you've had some action resulting from the eligibility
7 cutoff. So you can then put a date on it and put it
8 down there.

9 MR. SMITH: Well, then that's the sentence, if
10 you want that in the third recommendation, is that we
11 will provide specific recommendations at a date after
12 eligibility. I mean, you can say within 12 months, you
13 can say within 18 months.

14 MR. O'HARA: Just strike the whole thing.
15 It's getting confusing.

16 CHAIRPERSON CLEMENT: I don't think we'll get
17 consensus on it either.

18 MS. MARTINCIC: Wait. So now we're not going
19 to have something in there about the study?

20 MR. SMITH: No.

21 MR. O'HARA: I just want to be clear that
22 we're not just not setting a date and leaving it. We
23 intend to --

24 MS. MARTINCIC: Well, I mean, couldn't we just
25 say that, you know, the UST Policy Commission is

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1 charged with studying this issue and will continue to
2 be engaged --

3 CHAIRPERSON CLEMENT: And will continue to
4 provide our recommendations to the legislature per our
5 mandate or something like that.

6 MR. O'HARA: You can put that in the body of
7 your letter if you want.

8 CHAIRPERSON CLEMENT: I mean, I want to be
9 real clear here, though, that what we're voting on and
10 everybody that votes knows and agrees to it or doesn't
11 agree to it.

12 MS. MARTINCIC: So I will just add language
13 like that in the preamble. It is like a huge
14 monumental task.

15 MS. MARTINCIC: Are we ready to vote? Are
16 there more questions?

17 MR. SMITH: How about read the last one one
18 more time.

19 MS. MARTINCIC: Okay. The Policy Commission
20 recommends that a fixed phase-out date for the SAF
21 funding mechanism is premature and should not be
22 established at this time due to outstanding concerns
23 regarding SAF total fund liability, funding for
24 State-funded high-risk sites or orphan sites and
25 availability and cost of shifting to alternative

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1 federal financial responsibility mechanisms for
2 owner-operators.

3 CHAIRPERSON CLEMENT: Are we ready?

4 MR. SMITH: And I would make a suggestion.
5 Rather than tying these all together in one package or,
6 you know, two in one or whatever, that we vote on each
7 one.

8 CHAIRPERSON CLEMENT: Okay. Do I have a
9 motion?

10 MR. SMITH: I move that we vote -- that we --
11 I'm drawing a blank. I move that we vote on
12 recommendation number one of the UST phase-out
13 financial study committee number one.

14 CHAIRPERSON CLEMENT: And you're recommending
15 that we approve that, number one?

16 MR. SMITH: Yes.

17 CHAIRPERSON CLEMENT: Okay. All in favor?

18 (Response)

19 CHAIRPERSON CLEMENT: All opposed?

20 (No opposition)

21 CHAIRPERSON CLEMENT: All abstaining?

22 (Ms. Huddleston and Ms. Davis abstained)

23 MS. MARTINCIC: You're still abstaining on
24 that first one too?

25 MS. DAVIS: It's got to be tied to two. I'm

0057

1 sorry. It's just the rules I'm playing by.

2 CHAIRPERSON CLEMENT: Okay. Shall we go on to
3 the next? Number two. Do we have a motion?

4 MS. MARTINCIC: I would move that the Policy
5 Commission adopt the second recommendation from the
6 financial subcommittee.

7 CHAIRPERSON CLEMENT: Second?

8 MR. SMITH: I'll second it.

9 CHAIRPERSON CLEMENT: All in favor?

10 (Response)

11 CHAIRPERSON CLEMENT: All opposed?

12 (No opposition)

13 CHAIRPERSON CLEMENT: All abstaining?

14 (Ms. Huddleston and Ms. Davis abstained)

15 CHAIRPERSON CLEMENT: The third
16 recommendation? Do we have a third -- do we have a
17 motion on the third recommendation?

18 MR. BEAL: I'll move that we accept the third
19 recommendation as written.

20 MS. MARTINCIC: As amended

21 MR. BEAL: As amended.

22 MS. MARTINCIC: Verbally amended.

23 CHAIRPERSON CLEMENT: Is there a second on
24 that?

25 MR. O'HARA: Second.

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1 CHAIRPERSON CLEMENT: All in favor?

2 (Response)

3 CHAIRPERSON CLEMENT: All opposed?

4 (No opposition)

5 CHAIRPERSON CLEMENT: All abstaining?

6 (Ms. Huddleston and Ms. Davis abstained)

7 CHAIRPERSON CLEMENT: Very good. Thank you.

8 MS. MARTINCIC: So I guess I'll work with you,
9 Gail, and we'll send it off?

10 CHAIRPERSON CLEMENT: Yes. We have a request
11 from the public for a public comment from Mr. Dan
12 Kelly. Mr. Kelly?

13 MR. KELLY: Dan Kelly. Just one comment,
14 pleading, begging. This vote and this opinion of the
15 Policy Commission must be communicated to the
16 legislature immediately. Okay?

17 And I would ask you to take the lead in that,
18 Gail, because the process is slow. We know that we're
19 going to be involved in negotiations on this starting
20 the beginning of next week with both the Republican and
21 Democratic leadership in the Senate. They need to hear
22 your opinion very clearly and concisely. So please
23 communicate to them as soon as possible.

24 CHAIRPERSON CLEMENT: Thank you very much.
25 okay. Well, that was something. Should we go on to

0059

1 the ADEQ updates? Shall we take a 10-minute break?

2 Ten-minute break. We'll be back here about 10:40.

3 (Meeting Break)

4 CHAIRPERSON CLEMENT: Welcome back to the
5 March 24th, 2004, UST Policy Commission. We'd like to
6 resume discussions of our regular agenda. And the next
7 agenda item was the ADEQ updates.

8 MS. NAVARRETE: Judy Navarrete with ADEQ.

9 In your packets you have the graph of
10 February, the state of the fund as of the applications
11 as of February 29th. And you can see that there's
12 three of them that are over a year old, and those are
13 electronic reimbursements. Electronic reimbursement
14 has to be tied to the application date on the first
15 application that it was tied to.

16 That's my understanding. I'm going to try and
17 change that process somehow so these don't show up on
18 the report as overdue, but that may have to wait for
19 the new database. I don't know. Also there's some
20 that say they are over 90 days old. Those have been on
21 suspension, and as you know, the database doesn't keep
22 time. So if we have to send out an AN -- this is the
23 way it shows up on the report. The database only
24 counts total days in house, and there's not much I can
25 do about that unless, you know, you wanted me to go

0060

1 back and report on each one of these.

2 Also there is some trends showing already, and
3 I don't know whether we're starting to get into a panic
4 mode or what, but from all the applications that were
5 turned in last month, out of 49 of them, we had to send
6 out 19 ANs on the front end for proof of payment,
7 contract information, report of work, the release
8 allocation form, W-9s.

9 Those are things that are very, very basic.
10 I'm just amazed that we're having this problem. So I'm
11 going to keep real good track of it for March, and I
12 want to report back if we're still having that because
13 that really throws our process into a loop. Some of
14 the things that we need on the front end, we can't even
15 send it through to technical if it's too deficient. So
16 we need to take a look at that and maybe do something
17 about it.

18 And the appeals, we are getting these appeals
19 down. And we have gone to formal appeal on a couple in
20 the last month. Are there any questions?

21 CHAIRPERSON CLEMENT: Judy, Ms. Navarrete,
22 when you mentioned your first point about that you had
23 to send out 19 of the 49 applications that were turned
24 in last week over very basic items, and you believe
25 that's an unusually large number of problems of that

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1 nature --

2 MS. NAVARRETE: Yes. We were experiencing
3 problems of no proof of payment and the contract
4 information. But, you know, we had that one-page
5 contract form on the web. It's very simple. We're not
6 asking for the contract. We're just asking for the
7 information to be filled out.

8 So I think that -- I don't know what has
9 happened, but I want to research it a little more
10 because I just thought that was -- 40 percent that have
11 to have a notification sent out on them.

12 And what has happened is, I'm giving the front
13 end a couple of days. They can call and ask for these.
14 But I said after two days, if you don't get a response,
15 you send out an AN because if we wait a week or so and
16 these things just, you know, kind of fall and we
17 haven't sent out an application notification, then I
18 might miss a time frame, and I don't want to do that.

19 CHAIRPERSON CLEMENT: And you haven't noticed
20 any trends that it's new owners and operators or new
21 consultants or anything like that?

22 MS. NAVARRETE: No. I was just told about
23 this and so I was told to give you the numbers and the
24 reasons right away because I wanted to report it this
25 morning because I want to take a deeper look at it for

0062

1 March and see if I'm still having that problem.

2 CHAIRPERSON CLEMENT: Okay. Thank you. Any
3 other comments or questions on the SAF report? Okay.
4 Can we move, then, to the corrective actions report,
5 Mr. Drosendahl.

6 MR. DROSENDAHL: Yes. My name is Joe
7 Drosendahl. I'm the Acting Section Manager for the
8 Corrective Action Section. And in your packets you
9 have all the grafts regarding the corrective action
10 performance measures. One of them is missing this
11 month, and that's the number of LUSTs that were
12 reported each month.

13 We have discovered a problem in the numbers
14 that we have been reporting. And it appears that we
15 have been actually under reporting the number. So
16 we're working to fix that and we'll report back on
17 where we are on that next month. And we are making
18 progress on the Site Characterization Reports. The
19 total number of SCRs is coming down.

20 Presently the whole corrective action process
21 in getting CAPs submitted and approved and implemented
22 is one of my highest priorities, and, you know, we're
23 trying to work to streamline that whole process.

24 Seeing that these numbers on the graphs and
25 everything only show, you know, one part of what we do,

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1 we're also working on submitting a list of the other
2 activities that we have accomplished in this -- you
3 know, the last month. And hopefully next month we'll
4 start giving you a list of all the other
5 accomplishments that don't end up in a bean count that
6 show all the other things that have been done in the
7 last month.

8 A new graph that you have in this packet is a
9 snapshot of the State-lead program, the total number of
10 State-lead sites, where they are, whether they are
11 under investigation, under remediation or have been
12 closed. And that'll be a monthly feature from now on.
13 Is there any questions?

14 CHAIRPERSON CLEMENT: If there are no
15 questions, we'll move on. Thank you very much, Joe.
16 And thanks for continuing to try to improve the
17 information that we're receiving. We really appreciate
18 getting more and more detail of the actual full breath
19 of the program. And, Judy, I'm sorry. I skipped your
20 SAF Rule Update and I didn't realize that. So if you
21 wouldn't mind giving us a quick update according to the
22 agenda.

23 MS. NAVARRETE: Well, the update is the same
24 as last month's. There's been no legislation and there
25 is no rule writer as of yet.

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1 CHAIRPERSON CLEMENT: So no progress towards
2 actual development of new rules?

3 MS. NAVARRETE: No.

4 CHAIRPERSON CLEMENT: Do you have any
5 information regarding whether a rule writer will be
6 available or if the hiring process has started?

7 MS. NAVARRETE: Not until -- I would imagine
8 nothing until our budget is settled.

9 CHAIRPERSON CLEMENT: Ms. Davis?

10 MS. DAVIS: Yes. Madam Chair, I'm thinking
11 that, first of all, we'll wait until the legislation is
12 past to see how that's going to change the scope of the
13 important rules, the most important rules to write.
14 But I'm also thinking at this point that we'll probably
15 cut and paste existing resources to help with that rule
16 rather than -- I just doubt we're going to --
17 (inaudible). So we'll be cutting and pasting internal
18 resources for that.

19 CHAIRPERSON CLEMENT: Okay. Thank you. Any
20 questions or comments? If not, we'll move to the
21 Technical Subcommittee Update. And Mr. Gill will
22 provide us, as Chairperson, that update.

23 MR. GILL: At the beginning, I guess I would
24 need to ask Joe, because the first thing on the agenda
25 is the -- was to be presenting the consensus language

0065

1 for a vote. And I just wanted to know what the status
2 of that was because it's obviously not here, so --

3 MR. DROSENDAHL: Yes. This is Joe Drosendahl
4 again. Yes. I've got to do that. With all the
5 activity regarding the legislature and other internal
6 priorities, I have yet to finish that. And I'll try to
7 get that to you by the next technical subcommittee
8 meeting.

9 MR. GILL: Okay. I appreciate that. It's
10 going on four months now. And I think it's really
11 important. I mean, it's, I think, one of the things
12 that the Commission is -- one of our success stories, I
13 think, is being able to get information out to the
14 public through the bulletin.

15 And these issues deal with the concerns raised
16 with the groundwater study and how the regulated
17 community and DEQ, you know, can do things better, help
18 the process for the investigation move forward better.
19 So that's what we're trying to get out there.

20 So we need to get the issues on the bulletin
21 as soon as possible. And so I really would like to,
22 you know, to move these forward because I went through
23 last time, I went through those same issues again, that
24 we were waiting for consensus language to make sure
25 that it was clear what we thought the problem was. And

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1 some of them were just very minor changes. So I really
2 would like to see that move forward.

3 So basically, beyond just looking for the
4 consensus language on the first four or five issues of
5 the groundwater study, we also were provided at the
6 last technical subcommittee a draft DEQ/UST release
7 confirmation policy. And there were some concerns at
8 the meeting in that it -- what was provided was a flow
9 chart of how you go about getting an assignment of a
10 LUST number once you have a suspected release.

11 And the concerns were that the flow chart is
12 all well and good. I mean, it's basically the same
13 flow chart, the same process we have always used, but
14 it doesn't address the problems that the regulated
15 public is having right now getting LUST numbers
16 assigned. In talking with some consultants, it's
17 taking 18 months in some cases to get a LUST number,
18 and they still have not been assigned.

19 We need to know, what do you want? What in
20 the past has not been provided that needs to be
21 provided because, especially if we're looking at 2006,
22 2008 for eligibility cutoff, we need to get going on
23 the investigation.

24 So that was the biggest problem we had with
25 the flow chart is, it didn't provide any of the

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1 information that we needed to address the reasons we
2 were not being provided LUST numbers for confirmed
3 releases. And so we asked for some specific language
4 to some of those specific issues within that flow
5 chart.

6 MTBE investigation was part of the ones first
7 ones. We were looking for consensus language. MNA
8 stand-alone is the same thing. The only issue that
9 was -- well, actually it was still outstanding, and it
10 was part of the consensus language and it had a direct
11 bearing on the concerns that we just voted on about
12 the -- putting on a sunset date on the SAF funding was,
13 if we're doing monitored natural attenuation or MNA, if
14 the proposed MNA is 20 years and we're cutting it off
15 in 10, that creates a problem.

16 So DEQ is going to look at language to
17 determine when a proposed MNA, I guess, would not be
18 appropriate as far as going beyond the cutoff date or,
19 to put that on the other side of the coin, when it
20 would or would not be appropriate to do an active
21 remediation on a site that had a very minimal risk to
22 the environment and to human health. So we were
23 waiting on language on that as well.

24 We had a long discussion on the importance of
25 pilot testing. We're still in the middle of discussing

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1 the pilot testing and looking at language to provide,
2 but the most important thing that we wanted to discuss
3 at the last meeting was why pilot testing is important
4 because in the past -- well, actually on most sites we
5 have been denied funding to do a reimbursement for
6 pilot testing.

7 And it really is critical that you spend the
8 2000 to 10,000 up front to do a pilot test for your
9 site to design your system because two years or six
10 months or a year or two years longer at the end of the
11 process is much more costly than the two to \$10,000 up
12 front to adequately design your system. And that's
13 basically what was presented at the meeting.

14 Okay. Those are the main points that we
15 discussed. And there was one speaker slip that
16 referred to the LUST situation.

17 Do you want to discuss that now? Leon
18 Vannais?

19 MR. VANNAIS: I just -- I appreciate your
20 comments. They basically mirror what my comments were,
21 is that we're still seeing LUST numbers be submitted.
22 570 days later there's still no response.

23 Now, it's not an appealable agency action
24 because there is no response, and the only appealable
25 agency action is a written determination. So there are

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1 a number of people out there in the woods that are just
2 waiting, not sure whether or not they have to meet
3 compliance with rules, site characterization deadlines,
4 because, by their data, they have confirmed releases
5 and should be proceeding with corrective actions to
6 protect human health and the environment.

7 But since they have no assurance from the
8 Department that there's any SAF funding available, that
9 release or contamination is (inaudible), it's very
10 problematic, especially when we're looking to phase-out
11 of the eligibility and LUST claim submittal dates.

12 I hope the Commission appreciates the
13 importance of being able to elicit a response from the
14 Department and how that ties into any kind of time
15 frame for any phase-out, whether it be the tax, claim
16 submittal or eligibility. Thank you.

17 MR. GILL: That's all I have.

18 CHAIRPERSON CLEMENT: Mr. Drosendahl.

19 MR. DROSENDAHL: For the regulated community,
20 if there is any outstanding response to a reported
21 release to the agency, definitely, you know, let me
22 know. I don't know -- I know of one of the sites that
23 you're working, Leon, but I don't really know that
24 there's, you know, a serious problem. So definitely,

25 if there's any sites out there that have been

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1 languishing for, you know, 18 months, definitely let me
2 know.

3 MR. GILL: Well, I did find -- I was looking
4 for them when we were going through it and I missed
5 it -- at the top of the second page in the minutes from
6 the subcommittee meeting, basically what we asked DEQ
7 is to make a decision on the following two issues, and
8 these were right in your flow chart is, one, "What
9 triggers the release confirmation date and when does
10 the 90-day clock start?"

11 MR. DROSENDAHL: And we'll be responding at
12 the next technical subcommittee on those two issues.

13 MR. VANNAIS: I noticed on the Corrective
14 Action Report where you talk about LUSTs reported,
15 LUSTs closed and LUSTs open.

16 Now, there's a difference. I don't know what
17 the difference between LUSTs reported or the number of
18 incidences reported and whether or not those are upon
19 confirmation of ADEQ issuing a letter. Is that when
20 it's being presented as reported? Or, in other words,
21 how many incident reports are you getting every month
22 as opposed to (inaudible).

23 MR. DROSENDAHL: Yes. That's why we found
24 that we were under reporting on a monthly basis the

25 number of releases being reported because, of releases

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1 orally reported to the agency and before we can assign
2 a LUST number, we need to see some physical data.

3 And there's a time lag. So they might report
4 a release in one month but it might be the next month
5 or longer before we get the information to base a LUST
6 number on it. So there is a problem that we're trying
7 to fix so we can appropriately give the numbers to the
8 Policy Commission that make sense and that add up at
9 the end of the year.

10 MR. GILL: Well, would it would make sense on,
11 because I was looking at your first page of the
12 Corrective Action Report, and I was wondering, would it
13 make more sense to the Commission if the information
14 was given in numbers instead of percentages, although I
15 realize you can subtract and come up with a number.
16 But tell me, what does 28 percent mean? I mean, you
17 were just saying that some of those are suspected and
18 some are confirmed and --

19 MR. DROSENDAHL: Right. On the missing page
20 or the missing graph, it has all the information on how
21 many have been closed per month, how many have been
22 opened per month. And that's the one that we're kind
23 of revising to make sure that the numbers are
24 understandable and make sense.

25

CHAIRPERSON CLEMENT: Thank you. Mr. Gill,

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1 anything else from the Technical Subcommittee?

2 MR. GILL: No. That's all.

3 CHAIRPERSON CLEMENT: Okay. Thank you. The
4 next agenda item is the UST Legislation Update. And we
5 did have some discussion of this previously. And for
6 some reason my name's next to this and I have not been
7 involved in the legislative process. If there's any
8 additional information that anyone on the Commission or
9 from DEQ would like to report out on this, we'd be very
10 happy to hear it. Ms. Davis?

11 MS. DAVIS: I just want to give a real brief
12 report-out on what's included in the House and Gross
13 Bill that has gone to the Senate. Let's see. Probably
14 five or six large issues.

15 One is that the State assurance count will pay
16 up to unrestricted standards. That was in the
17 agreement between Director Owens' roundtable group and
18 the agency, 1052-N. And then there's also I think the
19 heart of it, 1054, where SAF becomes the primary
20 insurance mechanism. And that is retroactive back to
21 December 31st of 2002. We're hoping that the language
22 in there will take care of that.

23 It also says -- talks about the 10 percent
24 co-pay being the responsibility of the owner-operator,

25 and that what Andrea had brought up earlier is that

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1 folks still need to meet their financial responsibility
2 requirements, that SAF becoming the primary mechanism
3 for reimbursement for the first half million dollars
4 does in no way waive the third-party liability of the
5 financial responsibility requirements.

6 There's also another, hopefully, decreasing
7 the complexity of Judy's end of things where there will
8 be the adoption of one schedule of corrective action
9 costs. I believe that's in 2005. Of course that would
10 be something that the rules would need to be written
11 for.

12 The other significant piece is regarding the
13 Technical Appeals Panel which raises the membership
14 from five to 10 and has, I think, very strong language
15 about conflict interest of people who sit on the TAP as
16 well as ex parte communications for members chosen for
17 a particular panel.

18 In that legislation is the two eligibility
19 cutoff dates, 2006 for owners and operators, 2008 for
20 volunteers. And then the repeal, the delayed repeal of
21 the tax is 2011. And also in there are the -- there's
22 a bunch of important stuff actually in session law.
23 One, the last piece is that DEQ shall adopt rules to
24 implement the Act. And if it went through as passed,

25 it would have to, you know, adopt eligibility

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1 phase-out, the tax phase-out.

2 And then also there's a section in session law
3 as well, Section 6, that requires DEQ by September 1,
4 2009, to submit a report to the Speaker, the President
5 and the Governor regarding the liability of the fund.
6 And the Agency will have had some time to calculate the
7 liability, both of owners' applications that came in by
8 the '06 deadline and the '08 deadline.

9 And that's just the big picture of it right
10 now. That's the piece that passed to the Senate. And
11 again, a million things could happen.

12 CHAIRPERSON CLEMENT: Thank you. Any other
13 reports regarding the legislation?

14 Okay. Next agenda item, discussion of agenda
15 items for the next Commission meeting. I think we'll
16 have the basic agenda items that we typically deal
17 with. We're also going to have a specific agenda item
18 for risk assessment, and the Department will be
19 prepared at that point in time to give us a more
20 thorough analysis of where they are and where they are
21 going with UST risk assessment. I had sent out a draft
22 agenda with some bullet items regarding risk assessment
23 to the Policy Commission.

24 If you have anything else specifically that we

25 want DEQ to be prepared for regarding risk assessment,

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1 please get back to myself or Al and make sure it's on
2 the agenda for next time. The other agenda items will
3 obviously be a legislative update.

4 Anything else, based on where we are, that we
5 need to cover? Oh. Mr. O'Hara is going to be
6 shepherding the 2003 legislative report and will
7 probably have that out to you.

8 MR. O'HARA: Annual report. Probably get a
9 draft out this week to everybody. We'll approve it or
10 at least review it at the next meeting.

11 CHAIRPERSON CLEMENT: Any other agenda items?

12 Okay. The next agenda item is a general call to the
13 public. Are there any other public -- we had only two
14 speaker slips and both of those gentlemen have spoken.
15 Anyone else wish to speak today? Oh, Mr. Beck. I'm
16 sorry. Are you ready?

17 MR. BECK: What I'd like to bring up, the 2004
18 minutes have not been posted on the DEQ web site like
19 they have previously. We have not seen any information
20 available. Also I have clients, as requested by the
21 Policy Commission in October and December of last year,
22 that the DEQ handouts also be included as part of the
23 minutes being posted on the web site so everybody can

24 see what was going on.

25 The second item under SAF. SAF now says that

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1 they have a positive cash flow. No one has explained
2 exactly how they went from 7 to 8 million dollars in
3 the hole last year to being 8 million dollars positive.

4 I think that this Commission would be
5 extremely interested in knowing how, all of a sudden,
6 after encumbering 28 million, where is the other 58
7 million coming from? How did the thing dissipate as
8 far as being negative to a positive cash flow?

9 Also, in fact, if you look at the handouts
10 that were just done on the last page of the program,
11 the UST volunteer status, you'll see the last four
12 months, no UST volunteer determinations have been
13 rendered by the Department.

14 We had two clients actually ask DEQ why there
15 was a holdup, and basically we're told that there's a
16 new form that they have to fill out and resubmit to the
17 Agency, something they haven't been told about before.
18 The form was dated December 2003, and their
19 applications in for UST volunteer has been sitting
20 there for more than seven months.

21 I think it would be beneficial for the
22 Department to inform people, the 14, 15, 16, 17 sitting
23 there, that they have a new form that they have to
24 submit with all their other documentation to get their

25 volunteer applications processed. And until they get

0077

1 the volunteer applications, they can't apply to the SAF
2 nor are these people willing to conduct the work on the
3 site that's necessary. There's one site and clients
4 not willing to do any work on that particular site
5 until they get the volunteer status so they know they
6 can get the reimbursement from the SAF.

7 Also there's something that we were requested
8 last week by some interested people in the Bill 2677.
9 Based upon comments that were made here by DEQ, we know
10 that there are 7,400 active in-use USTs in the State of
11 Arizona, approximately. As reported by DEQ, about
12 6,400 of those things are double contained. The
13 remaining 2800 or approximately remaining 2800 are 98
14 compliant. That means they're single-wall steel,
15 something like that that has the linings or whatever.

16 We went back and did further research on that.
17 We took those 7,400 tanks, removed city, schools,
18 federal, state from that list. Then we went in and
19 took a look at anybody that had four or more sites and
20 removed that, and we came up with 1,421 USTs. That
21 also translated to 321 individual sites where those
22 tanks are held on.

23 We reviewed further how many owner-operators
24 were there for those 321 sites. There's 289
25 owner-operators that own three or fewer sites. So this

0078

1 whole application process that we're talking about now,
2 the SAF will directly affect 289, at least, small
3 owner-operators in the state.

4 Then the question was raised, okay, how many
5 larger owner-operators are there for the other tanks?
6 And there appears to be 64 large owners or people who
7 own or operate four or more sites. So we see a great
8 disparity on the number of owner-operators out there
9 that are considered four or more sites versus the small
10 owner-operator.

11 So that's something else the Commission needs
12 to be aware of so. So when this funding ends, we are
13 not going to be affecting the 64 large ones. We're
14 going to affecting the small 289 smaller
15 owner-operators.

16 CHAIRPERSON CLEMENT: Mr. Johnson.

17 MR. JOHNSON: Madam Chair, I'm Al Johnson.
18 I'd like to respond to Brian's comment about the
19 minutes. Just as information, we don't post minutes on
20 the web until they have been approved by the Policy
21 Commission. So that's why you haven't seen them.

22 CHAIRPERSON CLEMENT: And we would ask that
23 you continue to do that because they are not official

24 minutes until they have been approved by the
25 Commission. Thank you. Any other calls to the public?

0079

1 Okay. Announcements. There is going to be an ADEQ --
2 I know it's in here somewhere. Can you -- Al, would
3 you just update us on the May UST -- thank you.

4 The Arizona Department of Environmental
5 Quality will host a one-day conference on its
6 underground storage tank program on May 19th, 2004,
7 from 8:30 to 3:00 p.m. that will be held at the ADOT
8 Human Resources Development Center located at 1130
9 North 22nd Avenue, Phoenix, Arizona.

10 There's a handout and there's a lot of
11 information that is usually presented at these
12 meetings. And for those that are regulated, it's a
13 good idea to participate.

14 MR. JOHNSON: For those of you who aren't
15 quite sure of where this is located, it's directly
16 under the freeway on 22nd Avenue. I highly recommend
17 you park directly under the freeway instead of off to
18 the side to avoid any situations where cars or trucks
19 may go flying off. Plus, you're in the shade.

20 CHAIRPERSON CLEMENT: Okay. That's it, then.

21 Any other announcements or comments? Okay.

22 We will adjourn. The March 24th, 2004 UST Policy

23 Commission Meeting is adjourned.

24 (Meeting adjourned at 11:25 a.m.)

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C E R T I F I C A T E

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

15 DATED at Phoenix, Arizona this 20th day
16 of April, 2004.

17

Clark L. Edwards
Certified Court Reporter
Certificate No. 50425

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