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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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MEETING OF THE

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UNDERGROUND STORAGE TANK POLICY COMMISSION

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Phoenix, Arizona

8

May 26, 2004

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9:00 a.m.

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Location: Arizona Department of

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Environmental Quality

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Conference Room 250

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1110 West Washington

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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 Andrea Martincic

9 Barbara Pashkowski

10 Myron Smith

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P R O C E E D I N G S

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CHAIRPERSON CLEMENT: Good morning. Welcome to the May 26, 2004 UST Policy Commission meeting. And with that, we'll start the meeting. If you wouldn't mind, we'll start with a roll call of the Commission members with Theresa Foster.

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MS. FOSTER: Theresa Foster.

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MR. SMITH: Myron Smith.

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MR. O'HARA: Michael O'Hara.

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MR. GILL: Hal Gill.

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CHAIRPERSON CLEMENT: Gail Clement.

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MS. MARTINCIC: Andrea Martincic.

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MS. PASHKOWSKI: Barbara Pashkowski.

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MS. DAVIS: Shannon Davis.

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MR. BEAL: Roger Beal.

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CHAIRPERSON CLEMENT: And just a couple points as we get started. Everybody recalls that it's difficult in this room for the people in the back to hear, and it's also difficult for our court reporter to hear when somebody's speaking behind him. So any calls from the public, if you wouldn't mind stepping forward so we make sure we get an accurate representation of the information you're presenting.

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On that note, let's get started. Did everybody

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1 have a chance to review the March 2004 meeting minutes?

2 (Response)

3 CHAIRPERSON CLEMENT: Did everybody get a chance
4 to review the April 2004 meeting minutes?

5 MR. BEAL: No.

6 CHAIRPERSON CLEMENT: Roger, you did not? Did
7 everyone else, though, have an opportunity to look at
8 those? Do we have a call to approve those minutes, March
9 and April 2004?

10 MR. O'HARA: I make a motion to approve both those
11 minutes.

12 MR. SMITH: Second.

13 CHAIRPERSON CLEMENT: All in favor?

14 (Positive response)

15 CHAIRPERSON CLEMENT: All opposed?

16 (No response)

17 CHAIRPERSON CLEMENT: Thank you. Okay. We'll
18 start with the ADEQ updates. Judy Navarrete, SAF Monthly
19 Update, please.

20 MS. NAVARRETE: The monthly update is included in
21 your packet. And as of April 30th, 2004, we had 111
22 applications that had not had interim determinations. We
23 did have a couple in the 90-day category, and they actually
24 had gone over the 90 days. Does anyone have any questions
25 on the applications?

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1 MR. GILL: Judy, this was handed out.

2 MS. NAVARRETE: Yes. I was going to do that next.

3 CHAIRPERSON CLEMENT: If there is no other
4 questions or comments for Judy, Judy, why don't you move on
5 to your next point.

6 MS. NAVARRETE: You had asked me for a different
7 type of report on the Assurance Fund appeals, and so I have
8 tried to provide you with more information. And to show
9 you, through January, February, March, and April, those are
10 the number of appeals we received within that time period
11 within that month.

12 And last month, we received 17 in April. Six of
13 them were because of denials because they did not pay their
14 fees and taxes. So we had to deny them. And then of
15 course they sent in their fees and taxes. Those went away.

16 But also the most frequently appealed denial
17 codes, these denial codes are by an independent study. Al
18 Johnson came and took a look at all of our data, and this
19 is what he came up with as the most denied, frequently
20 denied codes. And they are almost the same as the ones I
21 provided when I first got here in November 2002. And
22 that's the second page of the -- was a report that I gave
23 the Policy Commission in '02.

24 And I have been doing costs because we have been
25 short people. And my number one observations from doing

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1 cost is they are missing backup invoices. The direct pay
2 worksheets do not match the preapprovals. And no
3 substitution waiver submitted for costs can go on a
4 substitution waiver, and so they have to be denied. And
5 then once they are denied, they are appealed and they put
6 in a substitution waiver and we pay them. So a lot of it
7 is just process.

8 CHAIRPERSON CLEMENT: Judy, I have a question. On
9 the bottom of that first page where you're talking about
10 which formal appeals actually went to hearing, it's only,
11 like, one out of quite a few. So I guess I'm wondering why
12 that is.

13 MS. NAVARRETE: Well, they either furnished --
14 usually they furnish more information or they get the Site
15 Characterization Report in and it gets approved during that
16 time period, or a couple of these are intermittent
17 insurance issues and then they can't be -- nothing can be
18 done because they want to wait for either legislation or a
19 superior court appeal that's going right now.

20 CHAIRPERSON CLEMENT: So there's no way to know
21 for out of state, April, there's no way to know if, like,
22 eight of those now are no longer being appealed or if they
23 are on hold?

24 MS. NAVARRETE: I could probably find out that
25 information. It's just more research. I'm short of

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1 people, but if you need it, I can get it.

2 MS. MARTINCIC: Is it that it gets resolved and
3 so, therefore, there is no need to go to the hearing? Is
4 that the majority of the cases?

5 MS. NAVARRETE: A majority, they are resolved in
6 the informal settlement conference or before.

7 CHAIRPERSON CLEMENT: Just to clarify, Judy, the
8 10 means that there were 10 formal appeals filed but only
9 two actually went to a formal hearing?

10 MS. NAVARRETE: Uh-huh.

11 CHAIRPERSON CLEMENT: And that hearing would be in
12 front of an administrative law judge which may or may not
13 include a technical appeals panel?

14 MS. NAVARRETE: Right.

15 CHAIRPERSON CLEMENT: Thank you.

16 MS. PASHKOWSKI: Judy, is the 10 the 10 that were
17 set for the month of April?

18 MS. NAVARRETE: Uh-huh.

19 MS. MARTINCIC: So they were set to go to a
20 hearing and then they got it resolved?

21 MS. PASHKOWSKI: Withdrawn by the appellant,
22 resolved, formal settlement entered during the hearing.

23 MS. MARTINCIC: I have another question. On the
24 Denial Code P51, does that just mean that someone's put
25 their activity under each year of the cost ceiling? I

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1 guess I don't understand that. If you could explain that.

2 MS. NAVARRETE: They tried to bill for it
3 separately, Project Management, and it's included in those
4 task items.

5 MS. MARTINCIC: So the Project Management costs
6 are already built into the cost ceilings?

7 MS. NAVARRETE: For that task.

8 MS. MARTINCIC: They have tried to also add it in
9 addition to the cost ceiling?

10 MS. NAVARRETE: Right.

11 MS. MARTINCIC: Just for those two years. You see
12 that?

13 MS. NAVARRETE: Each cost ceiling is different.

14 MS. PASHKOWSKI: Prior to May, if I may, prior to
15 2000 or it might have been 1999, Tara would know
16 specifically the cost ceiling for -- or there was a
17 separate allotment for Project Management cost and it was
18 roughly -- this is roughly 10 percent of the -- I think it
19 was personal service dollars. Don't hold me to it. But it
20 did differ in your cost ceiling years. 2000, 2001, it's
21 been built into the tasks so you don't -- you're not
22 allowed to bill for it separately.

23 MS. MARTINCIC: Thanks. I just wanted to
24 understand that.

25 CHAIRPERSON CLEMENT: Mr. Smith.

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1 MR. SMITH: Judy, I want to commend you and your
2 staff and Joe and his staff. Essentially there's nothing
3 past 180 days which I think is just a great win for
4 everybody.

5 MS. NAVARRETE: Thank you.

6 MR. SMITH: I do have a question on the top of the
7 page in your little write-up of State Assurance Fund
8 Appeals. The last sentence, I hope that's not the norm.

9 MS. NAVARRETE: That's not the norm.

10 MR. SMITH: That somebody's appealing for 97
11 cents.

12 MS. NAVARRETE: But you can appeal. That's your
13 right.

14 MR. SMITH: Sure.

15 MS. NAVARRETE: And I was just trying to get the
16 point across that, you know, it is people's right to
17 appeal, and if they don't give me the information so that
18 we can approve their costs, they certainly have the right
19 to appeal it, so --

20 CHAIRPERSON CLEMENT: It seems like a small amount
21 to contest. Judy, I had just a general question. When you
22 went back and you looked at all of this, are there some
23 major themes that you would like to share with the
24 Commission and with the public that's in attendance today
25 in terms of things that people need to take care of before

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1 they submit these applications so they are not getting
2 denials?

3 MS. NAVARRETE: Well, I think a lot of things. On
4 the cost side, I can speak to that because I have been
5 doing it, is I think maybe if there was just a little bit
6 better QAQC on the application before it left to come to us
7 to make sure that all the invoices were there, all the
8 backup information, all that stuff.

9 And there is a checklist in the application
10 itself, but I know that we need to add the application, the
11 substitution waiver and contract information to that
12 checklist. And I'm working on that to get that out on the
13 web because we don't have anything electronic, so it would
14 have to be out on the bulletin, the new page, and then you
15 could download it.

16 But it's mostly, I think, QAQC. And then
17 sometimes because we are having such a good turn-around
18 time at the present time, people are depending upon a
19 little lag time because they have submitted costs on those
20 applications, and some of the information has not been
21 submitted to CAS to be put in the LUST file, some of the
22 reporting, some of the monitoring, some of those things.

23 So once they start realizing that, they need to
24 have all their information into the Agency before they
25 submit that application because it's liable to get through

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1 in a short amount of time. Then I think we can cut down on
2 some of these appeals too because that's a lot of what we
3 settle on is, they finally get something in there and, you
4 know, it gets approved, and then we can approve the costs.

5 CHAIRPERSON CLEMENT: So basically they have been
6 leaving with their applications for reimbursement on
7 occasion rather than their technical documents because the
8 historic trend has been, it takes a long time for those
9 financial reviews to be completed, or SAF reviews.

10 MS. NAVARRETE: That's correct.

11 CHAIRPERSON CLEMENT: Mr. Smith.

12 MR. SMITH: Judy, are these 17 appeals which are
13 out of the 111 that are total active applications?

14 MS. NAVARRETE: No. Those, being activity
15 applications, haven't had interim determinations yet.
16 Like, we got in, what, 69 last month?

17 MR. SMITH: So it would be 17 out of 72, number of
18 interim determinations?

19 MS. NAVARRETE: No, because you have 30 days,
20 remember, to file an appeal. So it would be any time any
21 30 days prior.

22 MR. SMITH: I'm just curious what the 17 -- out of
23 what kind of a pool. Is that --

24 MS. PASHKOWSKI: You can't really correlate it to,
25 does it come from this third here or this 28 because of a

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1 couple of factors. One, the appellant could file its
2 eligibility in the first day it gets the determination.
3 And by statute the administrative hearing process requires
4 a hearing set in 60 days. So that appeal may, you know,
5 come sooner than one that is filed on the 30th day.

6 And then you also have to take into account that
7 some of these get continued, and so you really can't
8 correlate these numbers to a group of determinations that
9 were issued. There's just too many other factors.

10 MR. SMITH: Sure.

11 MS. DAVIS: Myron, I can share with you how I look
12 at that because I know what you're asking. Statistically
13 you would have to look at maybe a year of applications and
14 then how many hearings were filed, and sort of, that would
15 be a gross estimate but then again -- but not precisely
16 overlapping.

17 When I review this information, how I look at it
18 is, even though it doesn't correlate your exact time line
19 looking at January, 12 went to formal appeal, one went to
20 hearing, and in January, you know, you had 50, 47
21 applications that went in. You can roughly correlate it
22 that way, but we don't have a precise overlap.

23 MR. SMITH: And I was just looking for some kind
24 of rough estimate or percentage of how many appeals, you
25 know. Certainly more evident in the formal appeals, but in

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1 the formal I was just looking for, is it, like, 10 percent
2 of our population that you're dealing with or five percent?
3 I mean, does 17 represent a large number of appeals that
4 you're dealing with or are we really way down to the --

5 MS. NAVARRETE: I think 17 is a small number.

6 MR. SMITH: That's what I would think too.

7 MS. NAVARRETE: Very small number, especially
8 since six of them were due to someone not paying their fees
9 and taxes on time. I hope that trend continues.

10 MR. GILL: I just had one comment. Again, I also
11 want to thank you for the new format, and it's real
12 helpful. The one thing I wanted to add with the denial
13 codes and the descriptions, and it's the same issue that I
14 tried to bring up that I don't think was understood when
15 you gave us the first one, is -- the problem is, let me
16 take D31, "Inadequate support documentation to justify
17 costs/units claimed." That doesn't tell us anything.

18 MS. NAVARRETE: I tried to address that last
19 month. We have come out with an Attachment II. We were --
20 that is going out with all of the denials, and we were
21 doing it roughly just in the data -- in the -- you know, as
22 a Word document. Now we have actually programed it into
23 the database where the technical reviewers can do the
24 Attachment II, their points on it, and then cost can add
25 their points so when we do send out a determination letter

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1 with denials on it, everything is spelled out in paragraphs
2 as to what has been denied and why. So we have addressed
3 that.

4 MR. GILL: I think that sounds -- hopefully will
5 go a long way in taking care of the ones that keep
6 occurring. The reason that we kept asking for -- that's
7 basically what we were asking for.

8 Rather than the code, we wanted to see something
9 like that, like, if Al had found that 40 percent of the
10 denials were, costs were not supplied or line locating,
11 there was no backup for that, that's what we have been
12 asking for all along, which activities are the ones that
13 are denied the most, not the code because you see this
14 code. It's just a code. It doesn't tell us anything.

15 That's why we were trying to find out all this
16 time because then we could be able to spread the word,
17 these activities, they are being denied is why --

18 MS. NAVARRETE: Sometimes the activities cover or
19 the activity code covers more than one little precise piece
20 of information or one little piece of activity over here.
21 It's a generalization. And that's the only way you can do
22 it because if you had a code for every little piece of
23 everything, you would have thousands. And we do, I mean,
24 practically have thousands already. But I think the
25 Attachment II gets down to the nitty-gritty of what is

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1 missing. And people will become more aware of what they
2 have to submit with that application.

3 But another good thing that Attachment II does is
4 tells them exactly what they need to do to get these costs
5 paid. And so when they do send in that informal appeal,
6 they usually send in all that information with it. We go
7 ahead and process it. We don't even -- we set up an appeal
8 but then they -- you know, we pay it and they vacate the
9 appeal.

10 MR. GILL: That sounds like a good way to do it
11 and hopefully eliminate a lot of the appeals. Along with
12 the point you made, you can't have a code for every single
13 thing. And there is overlap. I just kind of wanted to add
14 something to the P51 which is the one that Andrea had asked
15 me about. In many cases that's the same issue with that
16 one.

17 When we first set it up we were trying to set up
18 all these cost ceilings. We were having problems.
19 Basically the State doesn't want a cost ceiling for
20 everything. They didn't want this huge -- it's a list long
21 enough as it is. There's many activities that we do out in
22 the field that overlap with other activities. Some of
23 those activities don't have cost ceilings. So there is no
24 Project Management in it so there's real difficulties.

25 How do we put Project Management in a tax that

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1 doesn't -- that we don't have a cost ceiling for that is
2 being done at the same time as one with a cost ceiling that
3 includes Project Management? That's one of the issues in
4 that P51. And why it occurs, because in the real world it
5 isn't -- we don't have a cost ceiling for every activity.

6 CHAIRPERSON CLEMENT: Are there any other
7 Commission comments or questions? Yes.

8 MS. FOSTER: I think we have seen a remarkable
9 improvement in the last few months in the informal appeals
10 process. Having just gone through five of them within the
11 past short period of time, I'm finding that the
12 clarification that DEQ provides to me gives me enough
13 information. When I come back and sit down for an informal
14 appeal, I can have all my ducks in a row and I can have all
15 my attachments with it.

16 In terms of getting additional descriptions on all
17 these codes, it's too site specific. After having gone
18 through probably 100 denials, I wouldn't want anyone to
19 have to wade through all the paperwork to see what the
20 denial code really means. I think this is good for
21 generalization.

22 We look at numbers for informal appeals filed, and
23 I think that we also need to think about, there's some
24 exceptions out there. Yes, we have people who haven't paid
25 their taxes. We also have people who are digging through

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1 archived information trying to get every dime they can from
2 the fund, but a lot of times backup documentation from up
3 to 10 years ago is no longer available. So you really
4 can't look at these numbers and say what caused it. Each
5 one is so site specific. I don't think looking at all of
6 that would benefit the program.

7 CHAIRPERSON CLEMENT: Thank you. Mr. O'Hara.

8 MR. O'HARA: I just wanted to thank you again,
9 Judy, for providing this. It's going to be very helpful,
10 and I think the Attachment II is really going to be helpful
11 in terms of getting specific information as it relates to
12 these general codes. I just had a quick question. At the
13 bottom it says "Attached: Example of an Attachment II --

14 MS. NAVARRETE: I forgot to attach it.

15 MR. O'HARA: Is that somewhere else?

16 MS. NAVARRETE: No. I'll get you that next month.
17 I had to redact everything out of that, and I then forgot
18 to attach it. I'm sorry.

19 MR. O'HARA: Are you starting to use those
20 Attachment IIs?

21 MS. NAVARRETE: Yes. But we just got them down in
22 the database where they can be printed out by people that
23 print out the spread sheets and everything that's sent
24 along with the determination letter.

25 MR. O'HARA: Okay. Thank you.

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1 CHAIRPERSON CLEMENT: Judy, one question I had
2 was, is there any value added to communicating this kind of
3 information in the bulletin or in any way to the public so
4 that -- I'm not -- do you have any recommendations
5 regarding, these are the typical problems we have, you can
6 avoid these problems, perhaps, by doing this, this, and
7 this? Is there anything that you could do in terms of
8 advice to the regulated community that you would suggest at
9 this point in time or not?

10 MS. NAVARRETE: I might could put something on the
11 bulletin right now. We are going to do something like that
12 in our presentation at the UST day, and so I thought that
13 would be nice to have that on the bulletin afterwards.

14 CHAIRPERSON CLEMENT: So would you recommend that
15 we wait until you've presented it formally?

16 MS. NAVARRETE: There's so much new information
17 going to be coming out, and if the Governor signs 1306.

18 CHAIRPERSON CLEMENT: Okay. Any other Commission
19 questions or comments? I did have a comment from the
20 public and I'd like to take it now while we're on this
21 topic. Mr. Beck, please. You're going to have to stand,
22 Brian, so he can hear you.

23 MR. BECK: I'll hold it until the end.

24 CHAIRPERSON CLEMENT: That's it. Judy, if you
25 would give us a quick update on the Rule development, SAF

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1 Rules.

2 MS. NAVARRETE: We haven't had any more progress
3 or worked on it. We are waiting to see if 1306 is signed.

4 CHAIRPERSON CLEMENT: Mr. Gill.

5 MR. GILL: Judy, where are we with the cost
6 ceilings? I mean, are they -- just as they stand, are they
7 going to carry over to the next year?

8 MS. NAVARRETE: I cannot answer that question
9 today. I need to see if the Governor signs this bill. I
10 need to see what we need to do to implement it, what
11 resources that's going to take and how many resources I can
12 throw at cost ceilings. So we'll have to address that as
13 we go along.

14 MR. GILL: Thanks.

15 CHAIRPERSON CLEMENT: Any other questions for
16 Judy? Comments?

17 (No response)

18 CHAIRPERSON CLEMENT: Judy, thank you very much.
19 We really appreciate your responsiveness in getting these
20 materials together. Thank you.

21 Joe Drosendahl, UST Corrective Action Monthly
22 Update, please.

23 MR. DROSENDAHL: Yes. In the packet you have all
24 the bean counts for the Corrective Actions Section. The
25 new way of doing volunteer determinations kind of shows the

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1 effectiveness on that graph. We are getting those out
2 quicker due to the use of the affidavit.

3 Site Characterization Reports, they are kind of
4 holding their own right now. I'm hoping to get that line
5 to start dropping down. All the other bean counts, the
6 lines are decreasing and there's always room for
7 improvement, but I hope that those lines continue to go
8 down, both. You know, Ren's group is doing great on
9 getting the risk assessments down.

10 Corrective Action plans are finally starting to
11 come down, and I'm hoping that increases a lot by next
12 month. And LUST case closures are continuing to go down.

13 CHAIRPERSON CLEMENT: Also the last page has an
14 update on the State Lead facilities.

15 MR. DROSENDAHL: That's correct.

16 CHAIRPERSON CLEMENT: When I look at this number
17 88 on the State Lead, it's got Closed LUST Facilities. Is
18 this, like, a 2004 update, or what time period does this
19 represent, I guess?

20 MR. DROSENDAHL: 88 is just from the inception.
21 Those are all the LUST sites that were dealt with by the
22 State Lead Unit.

23 CHAIRPERSON CLEMENT: So this is total to date?

24 MR. DROSENDAHL: Right, cumulative number.

25 CHAIRPERSON CLEMENT: Okay. Any questions or

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1 comments for Mr. Drosendahl? Mr. Gill.

2 MR. GILL: Joe, I was just checking to see if I
3 had this in my tech subcommittee notes and I don't. I
4 thought I'd ask it now because I remember I asked you at
5 the last subcommittee meeting. I know you're working on
6 the Corrective Action Plan Guidance. I was wondering what
7 the status of that is because that's really important.

8 MR. DROSENDAHL: And I agree, and we're still
9 working internally to streamline the whole Corrective
10 Action Plan process from, you know, requesting it for the
11 contents of it for the review of it. But that's still
12 being worked on internally.

13 CHAIRPERSON CLEMENT: That would also be affected
14 by this new legislation if it's signed by the Governor to
15 some degree, wouldn't it, or not?

16 MR. DROSENDAHL: I think a little bit, yes.

17 CHAIRPERSON CLEMENT: Any other comments or
18 questions for Joe?

19 (No response)

20 CHAIRPERSON CLEMENT: Thank you very much, Joe.
21 Keep up the good work.

22 MR. DROSENDAHL: Thank you.

23 CHAIRPERSON CLEMENT: We are going to jump to a
24 Financial Subcommittee Update and it's going to be very
25 brief.

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1 MS. MARTINCIC: We didn't end up having a meeting
2 in May because there really wasn't anyone here, and we're
3 going to reschedule the June meeting, I believe, for June
4 7th. Right, Al?

5 MR. JOHNSON: Yes.

6 MS. MARTINCIC: Notice will go out on the time.
7 We're going to push it back a week, and hopefully by then
8 we'll know more about this signed bill and if there's other
9 issues we need to look at within the financial
10 subcommittee. And I would just reiterate that if the
11 Commission has issues they'd like to see the financial
12 subcommittee to look at, please let me know.

13 And Al's been very good about having a regular
14 meeting. So if there's ever issues that you feel it's
15 appropriate for us to look at, let me know.

16 MR. O'HARA: Are you going to discuss legislation?

17 CHAIRPERSON CLEMENT: We have put it under this
18 agenda item and we're also going to ask DEQ to participate
19 in the discussion because they may be closer to the topic
20 at this point.

21 MS. DAVIS: Madam Chair, Mr. O'Hara, the bill is
22 out of the legislature but, to my knowledge, as of
23 yesterday it has not been transmitted to the Governor, and
24 this is such a wild bill. I mean, I think the fat lady's
25 awake but she's not singing at all. We haven't heard from

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1 the Governor's office, you know, that she vetoed the bill.
2 We have been in touch with the Governor's office as it's
3 gone through. Certainly as we have taken positions, those
4 have been cleared through the Governor's office. I'm not
5 sure when that'll be transmitted.

6 MS. MARTINCIC: I think it was transmitted when it
7 was passed out of the Senate, and she has so many days to
8 sign it or it becomes law because it shows that it's been
9 transmitted as of the 20th.

10 MS. DAVIS: I was in the Speaker's office in a
11 meeting on Monday, and what I heard was that it wasn't, so
12 we'll double check that.

13 MR. O'HARA: Can you or anyone provide details? I
14 have just been generally staying on top of the bill but I'm
15 not aware of the specifics. Just in broad strokes tell us
16 what it's going to do.

17 CHAIRPERSON CLEMENT: I would not be the best
18 person. At the last Commission meeting you all gave me the
19 okay to go ahead and do some minor support of at least the
20 three issues that we had reached consensus on. And I just
21 wanted to let you know that I did send out selected e-mails
22 to the legislature emphasizing our position. And I meant
23 to bring a copy of that. I sent the same e-mail but I
24 meant to bring it and I didn't, so I'll e-mail it to you.

25 MR. O'HARA: Did it work?

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1 CHAIRPERSON CLEMENT: I think the House might have
2 actually listened.

3 MS. MARTINCIC: DEQ coming on board helped. I
4 appreciate the Agency taking that side. But essentially it
5 makes the fund primary again for all owner-operators up to
6 the first \$500,000. Now, everyone still has to make a
7 claim on their insurance in order to preserve an additional
8 500,000, so that's still sort of -- you know, people are
9 still going to need to probably go to their insurance and
10 make claims in order to guarantee that second 500,000, but
11 it will be primary for the first 500,000.

12 And it did have a retroactive clause to help
13 people that were caught in that state of limbo with the new
14 sort of -- the interpretation that the Agency was making on
15 primacy. It has a lot of implications for volunteers.
16 They will now be paying a 10 percent co-pay like
17 owner-operators, and I think everyone now has to pool the
18 money or their applications, what is it, 10,000?

19 MS. DAVIS: It went down to five because of
20 volunteer issues that we heard from the officials in the
21 north. The floor for SAF application is \$5,000.

22 MS. MARTINCIC: So you want to bundle your
23 expenses to that level in order to -- and I think the
24 thought is that it will cut down on DEQ's sort of
25 processing costs. Let's see. And then there's the --

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1 well, the eligibility cutoff date's June 30th, 2006, I
2 believe. So basically the SAF is primarily up until that
3 date. After that date it goes away. No one's eligible,
4 basically, for the SAF. And then any claims that are
5 submitted prior to that date, any applications associated
6 with those claims have to be submitted by 2009. Is that
7 right?

8 MS. DAVIS: 10.

9 MS. MARTINCIC: The dates changed quite a bit
10 throughout all this. And then the tax, then what will
11 happen is 60 million is supposed to be sort of built up and
12 put into a fund to deal with, like, orphan sites and things
13 of that nature. And basically they have -- that extra new
14 fund has until 2013 to get 60 million in it. And then I
15 guess the drop-dead date is 2013. Right?

16 MS. DAVIS: For the tax.

17 MS. MARTINCIC: The tax goes away regardless,
18 whether the 60 million's built up or not.

19 The other thing that was important, I know, for my
20 members, for owner-operators, is that if they have gotten
21 their applications in by that 2010 deadline, they will be
22 paid because some of the earlier versions of the bill there
23 was no guarantee.

24 MR. O'HARA: If your site by the application
25 deadline is not completed, cleanup time completed, what do

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1 you do? Add that deadline? Split a preapproval?

2 MS. MARTINCIC: Part of the 60 million dollars, it
3 had to do with if it's -- is it just for MNA?

4 MS. DAVIS: Yes.

5 MS. MARTINCIC: If you have MNA costs that are
6 going to go on after that date, those monies will be
7 encumbered for owner-operators to help offset expenses.

8 MR. O'HARA: Thank you.

9 MS. MARTINCIC: I'm sure there's a lot more
10 details. And volunteers have to do preapproval for their
11 claims. Right, Judy? Don't volunteers have to do
12 preapproval now?

13 MS. DAVIS: After 100,000. If I could step back
14 to -- there was -- a bunch of you all worked on the round
15 table process that the director had. I just want to go
16 back to the point where John Pearce had written the letter,
17 and here are the things that we want. And then I responded
18 with a letter saying we're on board with these things, with
19 these conditions. And this has been a truly complex
20 process. It is a truly complex bill. And I hope -- I know
21 we're all going to use it to our advantage to help things
22 get done in a timely fashion.

23 Some of the things that I think are really
24 important is the primacy issue which Andrea has described
25 and then the eligibility sunset which she discussed, June

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1 30th, 2006.

2 The other piece is, there's much stronger language
3 in there for the technical appeals panel. The good news is
4 it doubles in size the pool that we can draw from, doubles
5 in size as well as, instead of three, there are now five
6 alternates. So that was a real specific thing everybody
7 wanted to see because of -- the trap is just getting -- if
8 they don't have conflicts, it's a time drain. So that
9 piece got fixed. The other -- the conflict of interest
10 statute has been beefed up. If there's any conflicts, the
11 person has to opt out whose on the tap.

12 And then the other critical piece is, it's very
13 clear about ex parte communications between members of the
14 technical appeals panel. If you're on the panel, you're
15 prohibited from talking to other people in the community
16 that have an interest in that specific case. So those were
17 some specific things that all of us wanted to see get
18 nailed down.

19 The really important piece too is that now,
20 clearly in statute, if the Governor signs the bill, it will
21 say that the SAF, it's legal for the SAF to pay up to
22 unrestricted standards. That's something I think everybody
23 wanted to see, especially the cities for the -- Brownfield
24 redevelopment, if you will.

25 So I think those are the pieces. And I remember

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1 also in the letter there were the cost control measures
2 wanted by the Agency for the volunteers. And how that's
3 worked is, after \$100,000 has been spent, then the
4 volunteer sites must go through preapproval.

5 A critical piece on that is, that will start in
6 July 1, '05. So the staff will be able to work with people
7 in the northern region. We have been having a lot of
8 contact with Chairman Despain, Navaho County Board of
9 Supervisors; Jim Jayne, the Manager; the mayors of Holbrook
10 and Winslow to try to get our arms around that area.

11 So we will work with them so that work on sites
12 can continue and get a preapproval process. In the
13 meantime, we'll have a good year to do that. Their concern
14 was that work has to be stopped in order to get a
15 preapproval in. But we'll be able to do that
16 simultaneously.

17 The other issue that Andrea brought up was the 10
18 percent co-pay issue, and that is a very difficult point of
19 negotiation and very difficult for the elected officials up
20 in that area. They are very concerned about the
21 redevelopment. I mean, the economy's a very different
22 place up there than it is down here.

23 So a couple of things that we have worked with.
24 We'll be doing, like, the Route 66 initiative, working with
25 State Lead to use the tools in the municipal tank closure

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1 program. There's a pool of about two million dollars to go
2 in and either yank old orphan tanks or stabilize them in
3 the ground, and even if there's contamination, bump them
4 over to staff.

5 The 10 percent co-pay is very difficult to
6 negotiate. And so here's how that works. And this was
7 negotiations with the real rural counties. They are still
8 not crazy about the bill, but here's how we worked with
9 them to get more in that volunteer provision for them.
10 They can go ahead and if a volunteer property owner wants
11 to hire his or her own consultant, they have a 10 percent
12 co-pay. And that's just how that works.

13 If they don't want to pay a 10 percent co-pay,
14 they can go into State Lead. They don't have to go into
15 State Lead if they don't want to. If they don't want to
16 have their property cleaned up, they don't have to unless
17 there's eminent danger of risk or exposure. And then it's
18 a different ball game.

19 The new legislation gives just a little bit more
20 authority for State Lead to go in where there's present
21 danger rather than the volunteer having to fail a couple of
22 times on technical or financial ability. Right now we're
23 in a place where the volunteer has to fail before we can go
24 in. And that's not good if there's an eminent risk.

25 The other piece where the 10 percent co-pay can be

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1 waived, one is with State Lead. The other place is the
2 report value on the assessor's tax rule, if the property is
3 worth less than the co-pay, then that's waived. And that's
4 where we're working with Navaho County to use their
5 assessor's tax rule.

6 So again, I want to be really clear that the rural
7 counties didn't support the bill for this reason. And
8 we're also real committed to working with those communities
9 and using Byron James up in the northeastern part of
10 Arizona to help us resolve the issues.

11 And then the other thing with Rules, I think, that
12 will be very important to the Commission to follow, three
13 major pieces. One is the SAF. Another piece in that
14 letter was to be able to have one cost ceiling, and that
15 was part of the exchange in the letters from the round
16 table. So that will be a big piece for Judy's shop.

17 Two other pieces which will be big is, through
18 Rule, how to establish the MNA procedures and also how risk
19 is determined. And the last piece I want to end on will be
20 the fund itself.

21 First, I think it's really important for everybody
22 to know that everyone who has a claim in by 2010, you're
23 guaranteed by legislation to get paid. And if the fund, if
24 it's 2013 and the fund runs out and the claims haven't been
25 paid, I imagine it would be very difficult for a

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1 legislature to deny the extension of the tax.

2 But I can't imagine getting through the next year
3 in this room, let alone 2013. So everyone's claims, none
4 of the claims are extinguished. All of the claims get
5 paid. The 60 million-dollar fund that Andrea refers to is
6 basically, I want to say, an orphan share fund.

7 The Agency -- and this is one of our -- I want to
8 be really clear. This is our heartburn with the bill is
9 the Agency's not guaranteed that 60 million dollars. If
10 the claims that come in exceed the revenue through 2011,
11 then the claims get to eat up the next two years of tax
12 that's set aside for 60 million.

13 I hate that provision. I hate that the State
14 isn't guaranteed its money for orphan cleanup. That's kind
15 of why the program was set up in the first place. And I
16 know that patience is a virtue in this case. And it's a
17 long way to go. And if the money is needed there, they can
18 do an extension of the tax without a Prop 108. And that
19 was the big deal is that, if you extinguish it in 2013 in
20 order to extend it, do you do a Prop 108?

21 And no, you don't. There's already been a tax
22 extension, and it's not Prop 108. And that was the reason
23 my director was such a long holdout on this bill was that
24 particular fund. So that's -- it's a complicated bill, and
25 I think it has just some fabulous pieces in it for the

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1 program.

2 MS. PASHKOWSKI: I just wanted to add one more
3 piece to the puzzle, and that's on the State Assurance Fund
4 meeting, primarily over insurance, so that no one is
5 misunderstanding the full extent of this provision, it also
6 provides that if an insurance company has paid a claim, the
7 insurance company will not be reimbursed. So the State is
8 not reimbursing insurance companies.

9 MS. DAVIS: One last point. Myron, I think this
10 is something you and I discussed way back, but another
11 critical piece in the time line, 2006, all releases must be
12 reported and then 2009 the Agency goes back to the
13 legislature with a report, and it's going to be sort of a
14 wild guess of what the liability will be because we'll have
15 had two to three years to inventory how much releases we
16 have in.

17 Now, that's 2009. 2010 claims are to be in, so
18 it's a bit backwards there, but we wanted that date built
19 in early to be able to report back. We're going to be
20 dealing with, I would imagine, a 60, 70 percent turnover,
21 80 percent turnover down the street. So this will be an
22 education process all over again.

23 But to me that report date in 2009 is really
24 critical to give everybody a sense of how big maybe the box
25 is because we really have no idea if we're going to get a

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1 zillion, half a zillion, if it will stay the same. So
2 that's a critical piece. And when we have our conference
3 we'll have handouts with time lines and program development
4 issues and we'll do it in a very rigorous way. But that's
5 what Andrea and I have off the top of our heads.

6 CHAIRPERSON CLEMENT: Mr. Gill.

7 MR. GILL: I generally have two questions. My
8 understanding, unless it's changed, the SAF is going to one
9 cost ceiling? Is that by 2005? Is there a date when
10 that's going to take effect?

11 MS. DAVIS: Yes. Madam Chair and Mr. Gill, I
12 believe by July 1, 2005, that's when we're required to have
13 one cost ceiling, and the day before everything else gets
14 repealed. So June 30th all other cost ceilings get
15 repealed, and then July 1, 2005 is one set of cost
16 ceilings.

17 CHAIRPERSON CLEMENT: That certainly will
18 streamline the review process in SAF. I think that's, you
19 know, a cost benefit right there. Mr. Gill.

20 MR. GILL: And the other question was, I had
21 misunderstood or I didn't hear what you said. The SAF
22 application floor was 5,000. What is that?

23 MS. DAVIS: Madam Chair, Mr. Gill, one of the
24 problems that we had, not so much now but prior, is that we
25 were getting many applications submitted for \$10, \$150, 97

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1 cents. And so this is -- and that was, I think, to get a
2 place holder in line when there was backlog. I think we
3 have seen a great reduction of that at this point. But we
4 wanted to put that in there to prevent that from happening
5 again.

6 MR. GILL: A minimum of 5,000?

7 MS. DAVIS: Yes.

8 MR. GILL: I thought the unwritten agreement was
9 20,000. I didn't realize --

10 MS. DAVIS: It was but it fell by the wayside.

11 CHAIRPERSON CLEMENT: Is there a time period
12 associated with that? Say there was -- you couldn't
13 accumulate 5,000 in costs for two years. You still have to
14 wait until you have 5,000 to file a claim?

15 MS. DAVIS: Yes, I believe so.

16 CHAIRPERSON CLEMENT: And one other question I had
17 on the bill, Miss Davis, is the 10 percent co-pay, one of
18 the issues I think that has been raised historically is
19 that the 10 percent co-pay was always on the books for the
20 nonvolunteers but it was difficult for the Agency to
21 determine whether it was actually being paid or people were
22 in compliance with that. Is there a provision now that
23 there's a specific compliance aspect?

24 MS. DAVIS: Madam Chair, yes, that was another
25 point in the round table's correspondence that has been

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1 included in the bill that there's a certification. Is it
2 an affidavit now? Certification.

3 CHAIRPERSON CLEMENT: Okay.

4 MS. DAVIS: So that will be for both owners and
5 operators and new volunteers.

6 CHAIRPERSON CLEMENT: Mr. Gill.

7 MR. GILL: Now, the 10 percent co-pay is to be
8 paid up front or each time? I guess the way it's been done
9 in the past, it's per application or as the work is done.
10 It's 10 percent of whatever the activity is done. Is that
11 still the same?

12 MS. DAVIS: I would imagine.

13 MR. GILL: Okay. The reason I was asking that
14 question is that's the one point that you paid where you
15 could be exempt is the report was worth less than the
16 co-pay. Well, if you don't know that until you've already
17 paid off the co-pay --

18 MS. PASHKOWSKI: It's per application. It's
19 valued or determined per application.

20 MR. GILL: But what I mean is, you've already paid
21 the co-pay on each application. And at one point you
22 reached a point where your report's worth less than you've
23 already paid if you've already paid it.

24 MS. PASHKOWSKI: It's my understanding, Shannon,
25 and please correct me, Madam Chair and Mr. Gill, that under

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1 the bill, if you submit an application for \$20,000 and your
2 property is assessed at \$10,000, that co-pay would be
3 waived. If your property is assessed at \$100,000 and your
4 application is at \$20,000, it will not be waived. If you
5 hold that application and accumulate more cost so that you
6 flip the value of the property so it's less than your
7 applications, it would be waived. Is that correct?

8 MR. GILL: So it would have to be kept track --

9 MS. DAVIS: These are some of the details we are
10 going to want to address. So we'll certainly get that
11 information out. That's a deeper dive than we have taken
12 at this point.

13 CHAIRPERSON CLEMENT: Well, congratulations to
14 everyone. I know there's been a tremendous amount of
15 effort to put the statutory changes in place, and I really
16 want to compliment those that have been involved much more
17 directly than myself because it was a huge effort. And,
18 you know, there's a lot of changes in here, some of which
19 some people like or don't like, but the major issues that I
20 think the Commission was the most interested in have been
21 addressed.

22 Even though we didn't get an SAF tax date, it
23 was -- there's an established date now for when the tax
24 will be no longer collected. At least there are a number
25 of stop gaps in there so they can analyze and assess

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1 whether that data will be extended into the future. So I
2 think it's a major accomplishment. Congratulations.

3 MR. O'HARA: That may render our statute that
4 deals with Policy Commission a little obsolete. Some of
5 our mandates are related to some of those things.

6 CHAIRPERSON CLEMENT: We can just go away, then.
7 Ms. Foster.

8 MS. FOSTER: Madam Chairman, I still have one
9 question maybe for clarification. Is it the understanding
10 with the new bill that the only thing that can get

11 reimbursed from the regulated substance money are LUST
12 cases, or is it any on a regulated substance throughout
13 that can go to the fund?

14 MS. DAVIS: Two things. It does say regulated. I
15 believe we put the word petroleum in.

16 MS. FOSTER: That would include all above ground,
17 any surface spills?

18 MS. DAVIS: No. And, generally speaking, LUSTs,
19 but using the statutory definition of regulated petroleum.
20 The second piece which was huge is, it does say in there
21 that those monies will not go to WQARF. There's a specific
22 provision in there, although with the fund that is created,
23 the director may use the money in commingle sites for the
24 petroleum piece, not the chlorinated solids piece but the
25 petroleum piece. And how are you going to split that baby

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1 is unknown to me at this point. Myron can figure that out
2 for us.

3 CHAIRPERSON CLEMENT: Okay. Any other questions
4 from the Commission, or comments?

5 MR. GILL: I just had one little comment. I see
6 the concern. I understand the application for 97 cents.
7 And one thing, one example that I can see where this could
8 be a problem is basically final closure of your site. If
9 all you have left to do is go and abandon all your wells,
10 it may not come up to \$5,000.

11 MS. DAVIS: There's a provision in there for the
12 last application.

13 CHAIRPERSON CLEMENT: There were some very good
14 thoughts, it sounds like. If there are no other comments
15 on that, let's move forward and go to the -- shall we take
16 a break? Quick break for 10 minutes before the Technical
17 Subcommittee Update. Thank you.

18 (Meeting break)

19 CHAIRPERSON CLEMENT: We're going to reconvene the
20 May 26th State Assurance Fund Commission meeting and go on
21 to Agenda Item 5, the Technical Subcommittee Update with
22 Hal Gill, Chairperson.

23 MR. GILL: The main issues that we discussed,
24 several of them were just the status reports from DEQ on
25 language that we are working on. The first one was the

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1 status of the UST release confirmation policy. And Joe
2 Drosendahl was hoping that they would get something
3 furnished right away.

4 So I just wanted to ask Joe what he thinks the
5 status on that is because that is extremely important.

6 MR. DROSENDAHL: I agree. I'm trying to get the
7 revisions done internally. At the present time I can't
8 really say, you know. To me it's like you just said, that
9 I think that's very important, especially with the Senate
10 bill and the eligibility to the SAF, you know, going away.
11 So I'm trying to get the final revisions done through
12 review internally. I'll try to have something to the
13 technical subcommittee by the next meeting.

14 MR. GILL: Okay. Thank you. The second issue
15 that we discussed was the -- and this is a huge one,
16 especially with the new Senate bill, and this was the
17 source zone definition. I understanding that one component
18 of the bill is that all sites are going to be --
19 remediation is soil only and the groundwater will be
20 remediated through MNA. And correct me if that's not
21 correct, but that was my general understanding of the bill.
22 And the issue is that, in defining the source, I think it's
23 in the Soil Rule that the soil is vadose zone only.

24 And in our discussions in the past in the
25 subcommittee, we had basically agreed that the source zone

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1 was the contamination above and below the water table in
2 the soil. If you don't clean up that source below the
3 water table, the contaminated soil that is basically
4 providing the contaminants for the groundwater, the 60
5 million dollars is a drop in the bucket. I mean, that'll
6 go on for a long time.

7 MS. DAVIS: Madam Chair.

8 CHAIRPERSON CLEMENT: Yes.

9 MS. DAVIS: I just want to read what source is
10 considered in the legislation because I think there's a
11 misperception what you said. And that got out and we
12 worked very hard, worked very hard to make sure that this
13 reflected MNA policy that came from the Commission.

14 And here's how it reads, and our intent was to
15 capture not just soil but any slug that was in the
16 groundwater or any slug that would threaten the
17 groundwater. "A source of contamination includes any one
18 or more of the following; free product, a regulated
19 substance present in the soil that causes or threatens to
20 cause an exceedance of the aquifer water quality standards;
21 a, 3, regulated substance present at levels that would
22 prevent timely reduction of contaminant concentration in
23 comparison with the performance of active remediation."

24 And we drew that language specifically out of EPA
25 MNA guidance. And then the fourth one is any other

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1 presence of a regulated substance causing an ongoing source
2 of contamination as determined by the Department. So we
3 worked really hard on that one to get everything in there
4 to make sure that the slug and contamination that would
5 threaten the groundwater that's in the soil gets removed,
6 and still being prudent and being able to use MNA.

7 So that's a big point for us to make sure that we
8 honor the policy that has been set in place. And I think
9 also with Rule there will be some more definition to what
10 MNA is. I just want you to know as a Waste Programs
11 Division Director, that's very important to me, and that we
12 take care of what's there and what threatens to be there.

13 MR. GILL: I appreciate that because that was a
14 big issue for discussion, especially if everything was
15 going to go to MNA and you've got limited funds. I guess
16 the only question I would ask is, do you think we need to
17 look at the -- because I know the Soil Rule is being looked
18 at now, and I don't know if you need to look at the
19 definition of soil in the Soil Rule because it limits it to
20 the vadose zone. That's something we discussed.

21 MS. DAVIS: Madam Chair, Mr. Gill, that's a great
22 question. And the definition of soil is being looked at.
23 And I have directed -- Phil McNeely is lead on the Soil
24 Rule, and I have directed him to make sure that when that
25 process, when we have that draft, that he meets with you

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1 and with Gail and also with Phil Schneider who are very
2 active in giving technical recommendations.

3 CHAIRPERSON CLEMENT: Do you know when the Soil
4 draft Rule will be available for review?

5 MS. DAVIS: Our goal was to release that this
6 summer after the legislative session was complete. So I
7 would imagine that's going to come out sometime in this
8 summer.

9 CHAIRPERSON CLEMENT: Thank you.

10 MR. GILL: Thanks a lot. The next issue we
11 discussed was the vapor migration. And I think I might
12 have touched on it in the last Policy Commission. This is
13 a huge issue, especially having to do with risk
14 assessments. They are finding across the country that many
15 of the risk assessments are failing due to indoor
16 ventilation models.

17 DEQ's trying to come up with some language and
18 working together to try to come up with some language on
19 what is acceptable in the state for the sampling, the
20 Vadose zone, basically the air, soil, gas.

21 And there's basically two sampling methods out
22 there right now, whether it's soil/gas probes taking a
23 soil/gas sample right from a specific zone or the flux
24 chamber is basically a bowl on the ground. And neither of
25 them are necessarily acceptable across the country as, this

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1 is the way you do it.

2 And so the difficulty is coming up with a method
3 that is going to be appropriate for Arizona. And the main
4 issue being is, right now our models, we're plugging in
5 soil data into an air model and they are all failing, and
6 so we need to put air data into the air model to see if
7 there truly is an inhalation risk. So that's a big issue.
8 We're looking at that now trying to come up with some idea
9 of what would be best in Arizona. So that's going to be a
10 continuing discussion on that.

11 CHAIRPERSON CLEMENT: Mr. Gill, if I can, I'd just
12 encourage you to look at national or other respected
13 sources of information and not try to recreate anything
14 because it is a tricky technical issue, and I don't
15 think -- I don't know if there's a lot of standardization
16 yet, but whatever exists already rather than recreating
17 things.

18 MR. GILL: That's what I had asked at the last
19 meeting is if anybody could come up with that, what they
20 knew that was nationally accepted.

21 MS. DAVIS: Madam Chair and Mr. Gill, my request
22 is that we not try to resolve vapor and soil kinds of
23 issues at the technical committee. I mean, I definitely
24 want those to go to the technical committee, but the hope
25 from the Agency is that those kinds of things are taken to

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1 the Soil Rule because those soil issues cover all the
2 remediation across the Agency. And once the Soil Rule
3 is -- the draft is open, that's where you need to be
4 playing because that's where all the minds are that are
5 thinking about it from many, many different ways.

6 And I think one of the things that we haven't done
7 well in the past, like the DEUR, for instance, is to
8 integrate the UST community into that larger discussion.

9 So I'm going to harp that these conversations need
10 to go to the Soil Rule because that's where the
11 conversation is taking place. And then, if you like, you
12 can take it back and forth to the technical subcommittee.
13 But that's where the larger issues will be resolved. And I
14 would hope that your issues go into that big discussion.

15 MR. GILL: That's fine. We don't want to be
16 taking two paths.

17 MS. DAVIS: There are people there from large
18 regulated entities that are dealing with vapor, people, you
19 know, from the Warren site, all that. So that's where that
20 would be. And I think your thoughts and your knowledge of
21 UST is going to be critical to go into that discussion.

22 MR. GILL: What are we waiting for right now to
23 start that discussion? Are we just waiting for the draft
24 rule to be written and then we'll start the discussions on
25 it?

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1 MS. DAVIS: It's going through internal review
2 right now. We have had four or five working groups. We
3 have split it out, you know, soil, vapor, gas, risk as an
4 issue, four or five things that we're getting ruled out.
5 And we're scheduled to do that this summer.

6 MR. GILL: I'll put that issue on hold until the
7 time that we can start discussions with the Soil Rule.

8 CHAIRPERSON CLEMENT: I would just encourage that
9 if there's research, however, that would be supportive of
10 the UST community as the Rule is developed that needs to be
11 done, perhaps we could do that through the vehicle of the
12 technical subcommittee. For example, identifying, are
13 there national standards for collecting that vapor flux
14 data? I frankly don't believe there are, but there may be
15 something that I'm not aware of. So thank you very much
16 for qualifying that.

17 MR. GILL: Thank you. The next issue is, we're
18 again waiting for DEQ to come up with language in reference
19 to the discussions we had on the feasibility study and the
20 pilot test issues. And I have here in my minutes that the
21 DEQ would try to provide some language by the next
22 subcommittee meeting.

23 That was all the issues that we discussed on the
24 agenda for the next meeting which will be June 9th in Room
25 4001-B which is upstairs. We're looking at the level of

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1 data validation for UST sites which goes along with the
2 with Tier II risk assessment issues.

3 Actually I'll ask Ms. Davis, other issues I had
4 were petroleum contaminated -- I may wait and see what is
5 going on with the Soil rule before we get into some of
6 these because it sounds like they are going to be addressed
7 in the Rule. Okay. That's pretty much it.

8 CHAIRPERSON CLEMENT: Thank you, Mr. Gill. And
9 the next --

10 MR. SMITH: I have a question for Hal and for Joe.
11 You know, it's been a while since we have talked about or
12 at least, unless I missed it in one of the last meetings,
13 the UST Guidance that we all worked on long and hard. I
14 mean, is there anything we need to do? Do we need to
15 retool that any at this point? Are there difficulties or
16 is it all running fine because I know we said we'd revisit
17 it on an as-needed basis, and I was just wondering if
18 there's any as-needed basis at this point.

19 MR. DROSENDAHL: This is Joe Drosendahl. Yes. If
20 the regulated community finds any problems with it,
21 definitely let me know.

22 MR. SMITH: Right. But I was asking more from
23 your standpoint, is there anything we need to tweak also?

24 MR. DROSENDAHL: Not that I know of right now.
25 Just the things that we have added to, you know, the

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1 bulletin board. Eventually those need to go into the
2 Guidance. So there is those things, but the wholesale
3 total re-do of the guidance, that's not in the works right
4 now but it's more of on an as-needed basis.

5 MR. GILL: We basically got sidetracked from
6 looking specifically at the Guidance document into looking
7 at all these issues with the groundwater study, but
8 basically the issues we have been discussing end up
9 modifying or changing things in the Guidance document.

10 And as Joe was saying, once we get approval of
11 different language, it goes to the bulletin and then
12 ultimately into the Guidance document which raises one
13 question. The language that we voted on last time, did
14 that make it to the bulletin?

15 MR. DROSENDAHL: Yes. It's on there.

16 MR. GILL: Great.

17 CHAIRPERSON CLEMENT: Any further questions or
18 comments? Okay. Then let's jump to the Tier II risk
19 assessments and related issues. We had a presentation by
20 DEQ last Policy Commission meeting, and there were some
21 fairly broad and complicated questions that came at the end
22 of that presentation.

23 And so we tabled those issues until this meeting.
24 And I tried to capture those issues and convey them in the
25 agenda and also in discussions with Al Johnson. And I hope

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1 that I have. If I haven't, please jump in here because we
2 do want to get answers to the questions that we in the
3 regulated community have on the risk assessment process.

4 So I believe, Ren, you were going to provide us
5 some answers to those fairly large-picture, standing
6 questions. And the first one that I believe we had some
7 additional discussion on was the quality assurance, quality
8 control and the data validation that's necessary for UST
9 data to be used in risk assessments that would be
10 satisfactory to the Agency.

11 MS. WILLIS-FRANCES: Yes. Essentially what I have
12 is an update for you. We have -- the stage we are at right
13 now is trying to correlate components of a quality
14 assurance plan with Guidance that already exists for the
15 UST program. And by correlating those two, we'll be able
16 to identify gaps and inconsistencies between what currently
17 exists in Guidance and what are the recommended components
18 after the quality assurance plan.

19 Shannon has tasked me with coordinating the
20 development of quality assurance program plans for the
21 entire division, and the UST policy or the UST portion of
22 it is now addressed. She's put me on a real aggressive
23 time line so that I should have some more sorts of results
24 probably by the next Commission meeting.

25 CHAIRPERSON CLEMENT: So you would be able to

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1 provide us an update of the status of your activities at
2 that point?

3 MS. WILLIS-FRANCES: Yes.

4 CHAIRPERSON CLEMENT: And right now, just for
5 clarification, if I wanted to do a Tier II risk assessment
6 and I had my database that was developed over the last 10
7 years of a UST site characterization, I would submit that
8 data supporting the risk assessment and my Tier II analysis
9 to you and you would look both at the data itself and its
10 sufficiency for the risk assessment and then, you know,
11 obviously risk assessment components. Is that correct?

12 MS. WILLIS-FRANCES: I'm going to turn part of
13 this discussion over to Joe, but I'm not sure what part of
14 that question is a question.

15 CHAIRPERSON CLEMENT: When you review the
16 sufficiency of the data that is used to support the risk
17 assessment and its conclusions, what are you specifically
18 looking at right now?

19 MS. WILLIS-FRANCES: Right now what I do know is
20 that the requirements for a risk assessment are more
21 rigorous or for sight-specific risk assessments are more
22 rigorous than those for a Tier I closure. And the reason
23 for that is that the Tier I levels have a safety buffer
24 built in, and you're starting to eke away at those safety
25 buffers as you progress to Tier II and Tier III. So we

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1 would make up for that safety buffer by having more rigor
2 in the data quality. The degree to which that will happen
3 is something that Joe's staff will be defining as we go
4 through the process.

5 CHAIRPERSON CLEMENT: Okay. So that will come
6 from Joe's shop rather than risk assessment?

7 MR. DROSENDAHL: She's been put in charge of the
8 QAPP. All the reports that Ren has been put in charge of
9 or to get done, yes, that's the mechanism where we'll be
10 more specific on, you know, the quality data requirements
11 for, you know, just normal site characterization work and
12 then also for, you know, doing risk assessments.

13 MS. WILLIS-FRANCES: The way we have addressed it
14 in some of the other QAPPs is by having a checklist. If
15 it's anticipated that they'll go forward to risk, that
16 outlines the additional quality concerns.

17 CHAIRPERSON CLEMENT: It has become a Catch-22 for
18 the regulated community in the sense that they have done
19 all this work up to now, it's been paid by the SAF, and
20 then they get to the risk assessor and saying, gee, it's
21 been acceptable everywhere else and you're saying yes, but
22 it doesn't necessarily meet our quality objectives? I
23 mean, has that happened at all?

24 MS. WILLIS-FRANCES: That has happened and that's
25 what the QAPP is supposed to address. It's supposed to be

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1 a communicating device to make sure all on staff know what
2 all of the regulated community is doing and all the
3 regulated community knows what we are reviewing. And it's
4 a pretty comprehensive document.

5 CHAIRPERSON CLEMENT: Any other follow-up
6 questions? Mr. Gill.

7 MR. GILL: Madam Chair, the other issue that --
8 and I was just looking at my action items for the
9 subcommittee. We didn't discuss this. It was on the
10 agenda for next meeting was the risk assessment issues.
11 But one issue that came out of this last meeting was
12 whether or not risk assessments were required in Rule.

13 And at the subcommittee meeting we didn't go into
14 it, but basically the action item was that DEQ would
15 determine whether the risk assessments are required because
16 there is confusion out there as to whether or not it's
17 required, a Tier II risk assessment is required in Rule or
18 whether it's just required when you want to get
19 reimbursement. The action item was that DEQ was going to
20 look into that.

21 MR. DROSENDAHL: I looked into that and I haven't
22 finished putting together, you know, the whole document
23 showing what I looked at, what I came up with. But the
24 whole issue comes from, you know, just a three-letter word
25 in 26301-C where it has and it kind of gives the

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1 implication that a Tier II is always required. But if you
2 look at the whole Rule on risk-based Corrective Action
3 standards, right in the beginning it says that the
4 owner-operator may subsequently perform progressively more
5 site-specific risk-based tier evaluations.

6 I also looked in the preamble to the Rule, trying
7 to see if there was anything in there saying that a Tier II
8 was required. All I found was wording that indicated, you
9 know, the tier of RBCA were options available to the UST
10 owners and operators.

11 In the preamble in regards to, you know,
12 Subsection C, it described the purpose of that subsection
13 and it just said just to communicate with the regulated
14 community on whether to submit, you know, the different
15 tier evaluations. Even there it didn't say that, you know,
16 a Tier II is always required. And from my knowledge of the
17 discussions when the Rule was developed, the tiers were
18 merely options available to the owners and operators.

19 CHAIRPERSON CLEMENT: Mr. Gill.

20 MR. GILL: Madam Chair, Joe, but the rub in this
21 program is always the SAF. Sorry, Judy. But in statute we
22 are required to choose the most cost effective, and if not,
23 then explain why. How do you know? And this is where we
24 are concerned is, how do you know and how do you choose the
25 most effective if you haven't done a risk assessment to

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1 show that you can or cannot risk assess this site which
2 would obviously be the most cost effective?

3 MR. DROSENDAHL: You know, in the documentation
4 that I'll be putting together, I'll address that. I
5 haven't finished answering that question yet, the cost
6 effectiveness on determining what number to clean up to or
7 how do you clean up to the number that is chosen?

8 There's two ways of looking at that. And then
9 with the Senate bill allowing people to get paid to clean
10 up to residential pieces of property, that has a little
11 bit, you know, of an effect on that decision too, so I
12 understand what the issue is is the whole cost
13 effectiveness, and I agree that we need to come to -- you
14 know, everyone being on the same page on that.

15 But the Corrective Action Rule in itself, in my
16 opinion, it does not require Tier IIs. It's only an option
17 available to the owner-operator.

18 CHAIRPERSON CLEMENT: Thank you. That was one of
19 the big questions. That's the second part of our cost
20 effectiveness and how it related to risk assessment. And
21 we'll be looking forward to the Agency and your opinion
22 further on that. Any other comments, questions regarding
23 risk assessment? We have got Ren in the audience today.
24 Thank you very much for being here.

25 MS. WILLIS-FRANCES: Thank you.

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1 CHAIRPERSON CLEMENT: Okay. Discussion of agenda
2 items for the next Commission meeting. We would like to
3 put on -- and I have spoken with Mr. O'Hara and Mr.
4 Johnson. We would like to put on a review and approval of
5 the annual report at the next meeting, and we are pretty
6 close to a final draft.

7 And we'll get that out to the Commission for their
8 review in time so that we can discuss and hopefully approve
9 that annual report. Hopefully we'll know, certainly by
10 June, what the legislative outcome is on Senate Bill 1306
11 and maybe have some updates from the Agency on
12 implementation of that legislation.

13 Other issues or agenda items that the Commission
14 would like to address at this point in time? If not,
15 anything that you're interested in, please make sure that I
16 get noticed and we'll get it on the agenda. I'm trying to
17 get a draft out. There's certainly no interest in not
18 doing a comprehensive agenda. So please let me know.

19 The other question that came up, and Mr. Johnson
20 asked, is typically we have recessed during part of the
21 summer, usually the month of July. Is there any
22 interest -- and we don't have to vote on this because I
23 don't have it on the agenda, but please consider whether we
24 want a July recess or perhaps an August recess, depending
25 on various people's vacation schedules. We have gotten a

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1 lot done, and I don't see anything pressing at this point
2 in time on the horizon. But we'll discuss this at the next
3 meeting, and I'll make it an agenda item so we can actually
4 have a Commission vote on it. Mr. Smith.

5 MR. SMITH: I'll bring up again, I don't know if
6 it's the right time, not the right time in the year but
7 just the right time in the progress of the Commission as a
8 whole. Should we look at going to a bimonthly schedule?

9 CHAIRPERSON CLEMENT: I think we're fairly close
10 to being able to do that. I will make this a specific
11 agenda item, both the bimonthly schedule and then a July
12 and/or August recess. I would judge that we're just going
13 to want at least an every-other-month meeting. But we can
14 talk about that. Anything else on that?

15 (No response)

16 CHAIRPERSON CLEMENT: Okay. We do have a speaker
17 slip from Mr. Brian Beck, and he asked to hold it until the
18 general call to the public. Mr. Beck, Item 3, SAF Update.

19 MR. BECK: At the last meeting I reported to you
20 that we had done special application submittals back in
21 January with 11 different applications. As of this
22 meeting, we have received 11 determinations all the way
23 through. We're appealing five of them. Six of them we're
24 not appealing because we have come to the conclusion with
25 the clients, if the denials are less than \$4,000 on an

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1 individual application, we're going to hold those and
2 actually put those denied costs on the following
3 application. So that's the reason that we are seeing some
4 downturn. And a lot of people are accepting to do that
5 right now.

6 The reason that we're doing that is because the
7 cost of going through the appeal usually exceeds \$4,000.
8 And we would rather assume to take those up on the
9 following section.

10 Also on direct-pay applications, we have seen a
11 large increase of requests for unusual things with direct
12 pays. Talking with six different people, we have received
13 requests for contracts on direct-pay applications with the
14 preapprovals. We have received requests for insurance on
15 direct-pay applications where that's also supposed to have
16 been taken care of. We have also received requests for
17 updated financials on direct pay-applications.

18 We have also thought this was very interesting.
19 In a number of sites we have now received requests for
20 financials for assuring financial responsibility compliance
21 on a site where there is no underground operating storage
22 tanks, and we have had some pretty interesting discussions
23 with people at the SAF saying, why do we need these things
24 because we have a preapproval document? It's all supposed
25 to be taken care of. We just don't understand the reason

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1 for these particular questions that we're getting.

2 And actually on two of these we actually had ANs
3 issued on these requesting contract, insurance, and
4 financials on applications.

5 CHAIRPERSON CLEMENT: Thank, Mr. Beck. Any other
6 comments from the public?

7 (No response)

8 CHAIRPERSON CLEMENT: If not, the next meeting
9 will be held on Wednesday, June 23rd, 2004. It will be at
10 this building, 1110 West Washington Street, Room 250. And
11 we will adjourn. Thank you very much.

12 (Meeting adjourned at or about 10:50 a.m.)

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

DATED at Phoenix, Arizona this 28th day of May, 2004.

Clark L. Edwards
Certified Court Reporter
Certificate No. 50425