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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

October 27, 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 Roger Beal

4 Theresa Foster

5 Tamara Huddleston

6 Michael O'Hara

7 Andrea Martincic

8 Myron Smith

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10 Phil McNeely

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P R O C E E D I N G S

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CHAIRPERSON CLEMENT: Are we ready to get

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started? Good morning.

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Welcome to the October 27th, 2004 Underground

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Storage Tank Policy Commission meeting. Call to order

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and roll call. Theresa, would you start the roll call?

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MS. FOSTER: Theresa Foster.

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MR. BEAL: Roger Beal.

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MR. O'HARA: Mike O'Hara.

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MS. MARTINCIC: Andrea Martincic.

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CHAIRPERSON CLEMENT: Gail Clement.

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MR. MCNEELY: Phil McNeely.

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MS. HUDDLESTON: Tamara Huddleston.

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CHAIRPERSON CLEMENT: Okay. Next agenda item,

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Approval of meeting minutes.

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Did everyone receive them and have a chance to

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review them? This is from the September 2004 meeting.

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Do I have a motion to approve?

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MS. FOSTER: A motion to approve.

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CHAIRPERSON CLEMENT: Second?

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MR. BEAL: Second.

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CHAIRPERSON CLEMENT: All in favor?

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(Affirmative response)

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CHAIRPERSON CLEMENT: Any opposed? The next

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1 agenda item is we'll move right into the ADEQ updates.

2 And the first will be the UST Program Update and
3 Mr. McNeely's name is next to that.

4 MR. MCNEELY: Thank you. UST Program Update.
5 I'll just run through a list of stuff that we have done
6 since our last board meeting.

7 On October 1st we did provide a draft of SAF
8 rules for informal comment. On October 5th we had a UST
9 conference which was pretty well attended, about 70 to 80
10 people, on October 13th.

11 We have had an informal SAF rules meeting where
12 ADEQ did a presentation for a couple hours and then the
13 stakeholders, actually the subcommittee discussed the
14 rules for three hours and prepared comments.

15 And then on October 26th, which was yesterday,
16 we had a roundtable meeting with some consultants and
17 city officials from Holbrook and discussed technical
18 issues on how to come up with a consensus on how to clean
19 up that area.

20 So we have been doing a lot of outreach,
21 actually, a lot of public meetings over the last month.
22 And that will continue on as the months go by.

23 As you notice, I'm on the next three agenda
24 items, A, B, and C.

25 Judy Navarrete's on vacation still. She had her

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1 grandchild and she's spending the month of October taking
2 care of her grandchild. So she'll be back in November.
3 So I'll just go on to the SAF Update.

4 CHAIRPERSON CLEMENT: Please do.

5 MR. MCNEELY: If you want to turn to your bar
6 graphs that has SAF determinations on it.

7 As you can see in September, we received 153
8 applications. And if you look at the trend in June; May,
9 June, and July, we received about 60. In August we
10 received 94, and then we had a spike in September of 153.

11 So this month, in October, it's looking like
12 we're going to go back down to the normal 60-range trend.

13 And our reviews have been pretty steady,
14 actually, about 65 this month.

15 And then we are short staffed and we're trying
16 to hire. We have authority to hire. It just takes some
17 tire time to hire. And we're trying to do things more
18 efficiently, staging groups of applications together.

19 So when Judy gets back, we'll work on trying to
20 knock that 153 down and get them reviewed quickly before
21 it gets past the 90-day mark.

22 As you can see, just looking at the table, most
23 of them are still less than 90 days. 166 are less than
24 90 days. 17 or 18 are over 90 days. And a lot of these
25 18 could be interim determinations that we have already

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1 made, just waiting for information.

2 There's just no way for us -- our database
3 doesn't really track it that way and we can't stop the
4 clock so that doesn't necessarily mean we have 18 past
5 the 90-day mark.

6 If you want to flip the page over to the
7 appeals, the appeals have been going up informally.
8 Informal appeals, you can see the trend. July we had 13;
9 August, 22; September, 31. And I have asked about that.
10 What is that trend going on?

11 We have received a lot of applications that we
12 just feel like they were incomplete and we had to make
13 some -- there's a whole bunch of them. So we sent them
14 out, big bulks of them.

15 So I think that's not really necessarily a
16 trend, that we're going to have more appeals in the
17 future. I think it's just a short-term trend that
18 hopefully will reduce next month.

19 CHAIRPERSON CLEMENT: Question for you, Phil, on
20 that, Mr. McNeely.

21 When you say incomplete applications, is this,
22 like, new applicants or new consultants because the
23 process has been in place for some time.

24 So why do you believe that we're getting such a
25 high volume of incomplete applications at this juncture?

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1 MR. MCNEELY: What I think it is, I think since
2 we had the Senate Bill 1306 come into effect August 25th,
3 maybe there's some misconceptions in meeting that
4 deadline or something, trying to get them in quickly.

5 It seemed like we had a whole lot of
6 applications over the same period of time. We had some
7 that -- it was just very confusing. We couldn't figure
8 out what was going on with these applications. We denied
9 a lot of them, saying we can't figure it out.

10 So I think that's what happened. I don't think
11 it's going to be a current thing. I mean, I don't think
12 it's going to be an ongoing problem. I think it's just
13 probably a one-time issue, August September time frame.

14 And then if you look at the formal appeals, we
15 have three in September, and actually one was supposed to
16 go to hearing but it was postponed.

17 So that actually looks like it's going down, if
18 you look at the trend, from 10 to 8 to 3.

19 If you want to turn to the next table, the
20 process summary, I won't really talk about it. You can
21 just see that it gives you direct pay, preapproval
22 reimbursement. It shows you where they are in the
23 process. So, in total, 168 are still in process less
24 than 90 days. 18 are over 90 days.

25 That's it for the SAF.

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1 CHAIRPERSON CLEMENT: Any questions or comments?

2 Thanks. Mr. McNeely?

3 MR. MCNEELY: I'm up next for the Rule Update,
4 Item C, the SAF Rule Update.

5 And let me step back to the Program Update.

6 One thing we do have, we have action items on
7 the agenda -- not on the agenda but on the minutes. And
8 I just want to make sure that we address all the action
9 items every month. So I'm going to go through the three
10 action items.

11 We had one which was to provide a road map to
12 the web. And Al Johnson did send an e-mail out to
13 everybody that you have on your stakeholder list on how
14 to get to the web.

15 So if anybody has any questions on how to get to
16 our tank programs website bulletin board, ask Al. He'll
17 get that information for you.

18 The second one was, talk to the AGs -- the
19 second action item was talk to the AGs about doing a
20 presentation on when do we do a vote for the Commission
21 to make recommendations up to the director.

22 And as the chairman talked about that, that will
23 probably happen at the November 17th meeting.

24 Or did you talk about that?

25 CHAIRPERSON CLEMENT: I haven't talked about it

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1 yet. And just for clarity, both to the Commission and to
2 the regulated community, we had this originally scheduled
3 for this meeting but it was an issue that Mr. Gill had
4 brought up and he was not going to be present physically
5 today. So we postponed that discussion until November.

6 And we will probably hold that discussion,
7 further request to the AG's office in executive session.
8 And we haven't decided yet if we'll hold that before or
9 after the meeting so we're not disrupting your
10 participation.

11 But we do have some sort of administrative
12 quasi-legal, just a revisit of how the Commission should
13 operate in terms of decision making and vote taking. So
14 I just wanted to give you that update.

15 MR. MCNEELY: And the last action item from the
16 September 22nd board meeting was to give a status update
17 of the SAF, the actual balance. And that was Mr. O'Hara.

18 Just quickly, in Maricopa County we have a \$7.2
19 million balance and we have \$2.2 million of claims in
20 process, so that leaves us about a \$5 million balance
21 after those claims will be paid.

22 In nonMaricopa we're looking very good. And we
23 have a \$26.5 dollar balance and we have 2.1 million
24 dollars in claims so that gives us about 24 and a half
25 million after all the claims are filed or paid.

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1 So that shows you that we're still doing a cash
2 basis. We're very far away from any ranking possibility
3 right now. And we'll keep track of that and let you guys
4 know when ranking may happen.

5 MR. O'HARA: And could you just provide periodic
6 updates if you see any shifts in that, if you see more
7 claims coming in?

8 MR. MCNEELY: You know, it looks like, just from
9 that, that Maricopa County, eventually I could see that
10 happening first but the nonMaricopa, we're pretty far
11 off.

12 CHAIRPERSON CLEMENT: Does your outstanding
13 claims include the new applications, that big increase we
14 see in the 153?

15 MR. MCNEELY: This was as of October, all the
16 claims as of September 30th. So it should include all of
17 those.

18 CHAIRPERSON CLEMENT: So that's pretty good. We
19 have a fairly decent buffer there.

20 Could you make this a part of your presentation
21 every month if we're having a monthly meeting? Is that
22 possible?

23 MR. MCNEELY: I'll ask Judy. I don't know how
24 much effort this takes to collect all this information.
25 If it's easy, we'll do it. If it's not, we'll probably

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1 do it quarterly.

2 CHAIRPERSON CLEMENT: Okay. Or at least give us
3 a trend if it looks like it's going in the wrong
4 direction, of course.

5 MR. MCNEELY: Well, on to the SAF Rule Update.
6 I thought we had a pretty good meeting on October 13th
7 and we're going to have a letter.

8 I saw from the Commission just general comments.
9 We have received a few e-mails with more specific
10 comments and I'm looking forward to -- the more specific
11 comments, the better, actually.

12 So November 1st is the deadline to get written
13 comments in. Hopefully we'll get more written comments
14 with specifics, not just generalities because
15 generalities really don't help me out that much but
16 specifics do.

17 So submit your comments in writing or e-mail and
18 we'll look at them.

19 And there's been -- our stance, right in terms
20 of the timing, we're still looking at -- November 1st is
21 the deadline. And after that, we're still looking for --

22 You know, the time line, I feel you'll get to
23 make a request to delay the process or have more
24 meetings. We'll wait for all the comments to come in on
25 November 1st and then we'll evaluate the comments and let

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1 you know what the plan is.

2 But right now the plan is, we're staying on
3 schedule until we evaluate the comments on November 1st.

4 That's all I have.

5 CHAIRPERSON CLEMENT: Great. Thank you very
6 much. Any questions or comments on Mr. McNeely's
7 presentation?

8 Okay. Then we're going to turn to the
9 Corrective Action Monthly Update with Mr. Drosendahl.

10 MR. DROSENDAHL: Good morning. My name is Joe
11 Drosendahl. I'm the Section Manager for the Corrective
12 Actions Section. In your packets is the productivity for
13 the section.

14 Things are moving along. Sometimes the only
15 real change is in the number of CAPS that need to be
16 reviewed. Back in August we got 18 new CAPS in, so right
17 now we got a lot of CAPS that we need to review, you
18 know, and get out the door.

19 All of the other reports are either -- we're
20 kind of maintaining where we are or we're definitely
21 increasing the number that need to be reviewed.

22 I'm trying to, you know, streamline and increase
23 our productivity as much as I can.

24 So hopefully over the next few months we'll see
25 an increase in productivity and a decrease in the number

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1 of reports that haven't been responded to yet.

2 In regards to, you know, what else the program
3 is doing, currently we have a group of people going
4 through our boilerplate letters, making sure that they
5 are up to date and appropriate and creating any other
6 boilerplates that might speed getting things out.

7 There's a group of people looking at the CAP
8 process, streamlining that.

9 And I just received their first, you know,
10 update on streamlining the CAP process so that's still
11 going on internally. Once we get that finalized
12 internally, we'll be submitting the streamline CAP
13 process to the Policy Commission.

14 CHAIRPERSON CLEMENT: Joe, Mr. Drosendahl, a
15 question on that. The streamline CAP process, that would
16 be actually a process flow chart or a handout in terms
17 of, this is the format we want when you submit CAPS, or
18 what are you talking about specifically?

19 MR. DROSENDAHL: Right. The whole CAP process
20 from what the CAP contains and improving the Guidance for
21 the CAP. We're doing everything about the CAP to try to
22 streamline and reduce the time it takes to put those
23 together and to get them reviewed and approved by the
24 department.

25 CHAIRPERSON CLEMENT: Have you had to make any

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1 changes in terms of your CAP process or your CAPS
2 relative to the recently-passed legislation because the
3 legislation did change, I think, the program's focus in
4 terms of source of control and then also the potential to
5 use residential standards as the cleanup criteria.

6 Does that affect that at all in any way?

7 MR. DROSENDAHL: No, not really. People, you
8 know, for years have really been concentrating on the
9 source. Usually on site they do the corrective actions
10 and off site usually is left for modern natural
11 attenuation, usually.

12 I think we're going to see that a little bit
13 more, more concentrated, an effort to remove the source.
14 But it doesn't really change what goes into a CAP or the
15 process of reviewing it nor does what they clean up to.
16 It's just another number they clean up to.

17 CHAIRPERSON CLEMENT: Thank you.

18 The other question that we have as sort of an
19 ongoing question is the risk assessment and the software
20 and where we are with that program now.

21 MR. DROSENDAHL: Yes. They are still trying to
22 develop the Beta version of that to, you know, to submit
23 to a group of internal and external guinea pigs to test
24 out the software. It's ongoing.

25 Jeanene Hanley is spending a lot of time trying

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1 to get it to that point. I have seen parts of the
2 software. And from a totally nonrisk, noncomputerized
3 person, it looks pretty good.

4 CHAIRPERSON CLEMENT: Do we have, and I don't
5 mean to be overly critical, but this is probably the one
6 technical component of the program that seems to be
7 delayed continually.

8 And month after month, frankly, we have heard
9 when this is going to be released, the Alpha version and
10 then when it's going to be released, the Beta version,
11 and then when it's going to be released actually for
12 these people to be able to use as a tool to help the
13 program and help themselves and help you.

14 Do you have any time line that we could
15 understand that would have some reality to it because it
16 really gets pushed back every month every time we ask.

17 MR. DROSENDAHL: I could give you an optimistic
18 one but, you know, I think that -- you know, gee, you
19 know, the Beta version should be out next month. But I
20 can't say that it'll be out, you know, November 11th.

21 Basically, you know, we're trying to work out
22 some, you know, tweaks to the software to make sure that
23 it's the best software we can get.

24 We're hoping that the Tier II software helps a
25 lot of people, and to do that appropriately, we need to

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1 make sure the software is as close to perfect as
2 possible.

3 And we're trying to make it as user friendly as
4 possible. And it's because of those things that problems
5 come up and through just the contracting process, you
6 know, we have to kind of go through a formalized process
7 of having the contractor, you know, look at the changes
8 and see if it's in scope, out of scope.

9 CHAIRPERSON CLEMENT: So you still have the
10 contract support for this program.

11 Do you have enough contract dollars to support
12 the completion of the software at this point in time?

13 MR. DROSENDAHL: Yes.

14 CHAIRPERSON CLEMENT: So there is no issue
15 regarding resources or contracting capabilities?

16 MR. DROSENDAHL: No.

17 CHAIRPERSON CLEMENT: Any other questions?
18 Anything else, Joe, that you wanted to highlight?

19 MR. DROSENDAHL: Yesterday, just kind of an
20 update for the Route 66 project that the department and
21 the regulated community is going through right now.

22 Yesterday we had a technical meeting regarding
23 just the general technical issues regarding the Holbrook
24 area.

25 A lot of consultants that are working up in the

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1 Holbrook region and ADEQ got together to talk about basic
2 technical issues of Holbrook that -- you know, we came
3 with, you know, a lot of consensus. A lot of them are
4 are kind of like the no-brainer consensus.

5 But it's still good to be on the same page even
6 with the simple things. We talked about a lot of issues
7 that might stand in the way of, you know, preventing
8 people from remediating.

9 There's technical issues. There's, you know,
10 kind of regulatory issues, both from the State and from,
11 you know, the City that we talked about on how to try to
12 resolve to, you know, get things moving as soon as
13 possible.

14 There was a lot of good discussions. And as we
15 told the group yesterday, this is not an ending point for
16 technical discussions.

17 It's just, you know, it's part of the continued
18 process of increasing the communication between ADEQ, the
19 regulated community, and the City of Holbrook.

20 CHAIRPERSON CLEMENT: Is there a mechanism
21 because, obviously, not everybody can participate in a
22 meeting like that or even everybody is notified about a
23 meeting like that that might have an interest.

24 Is there a way to document sort of your key
25 technical issues and solutions so that another consulting

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1 team or another own and operator could come in and say,
2 oh, they have already decided this is the framework, you
3 know, so we don't have to reinvent anything or contact an
4 individual? Is there anything you're going to do
5 relative to communication?

6 MR. DROSENDAHL: We are going to do a summary of
7 the meeting yesterday with what was talked about, what
8 was the general consensus on some issues, and what were
9 some of the other issues that were brought up that, you
10 know, everyone needs to kind of work on to resolve.

11 Once that gets finalized, I can make that known
12 to, you know, the Policy Commission. We're still trying
13 to create a Route 66 web page, and hopefully we'll be
14 able to put that up on the web page.

15 CHAIRPERSON CLEMENT: Mr. McNeely.

16 MR. MCNEELY: Yes. I just have a comment on
17 that note. We wanted to have a lot of technical
18 discussion with the consultants and the owner-operators
19 and cities and towns just to get on the same page.

20 But I don't want that to turn into a new
21 Guidance document or a new policy on every single city or
22 every meeting because that way that will limit our
23 ability to talk.

24 Because I want to have a lot of open discussion.
25 I want our approximators out in the field talking to the

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1 consultants so that they absolutely understand what we
2 are thinking and we understand what they are thinking.

3 So about documenting it, you know, that's fine
4 but, at the same time, when you start documenting stuff
5 and then decisions are made, the next thing you know,
6 it's a policy or a Guidance document and it gets very
7 confusing.

8 So I want open discussion. And it was a
9 roundtable. It wasn't a public meeting. Just so we can
10 talk. And we're going to keep doing that on a lot of
11 different sites and a lot of different issues.

12 CHAIRPERSON CLEMENT: There is that delicate
13 balance between recording information. There's a
14 delicate balance between informing other people who are
15 not, quote, stakeholders to the consensus or the ways
16 you're going to be looking at these sites.

17 And so I just encourage you -- I know you don't
18 want to get into a laborious administrative process that
19 has to go through reviews, et cetera, but, you know,
20 people should have the information if you're putting it
21 together and you're reaching consensus on some of these
22 more contentious locations.

23 And I just encourage you to find a way that you
24 can do that, to educate people and make sure. Then you
25 have a comprehensive approach and everybody's moving

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1 together, hopefully, in the same manner.

2 MR. MCNEELY: And I agree with you. I
3 understand.

4 CHAIRPERSON CLEMENT: That is a balance.

5 If these are not private meetings and there are
6 going to be public meetings, the other point I would
7 encourage you is that you provide that information so we
8 can articulate in these meetings.

9 And we do sometimes get a pretty good turnout of
10 people maybe not on your distribution list so we can make
11 sure that they are notified about any public meetings in
12 those areas also.

13 Any other comments, questions?

14 Okay. And that included your risk assessment
15 update, Joe?

16 MR. DROSENDAHL: Yes.

17 CHAIRPERSON CLEMENT: Okay. That's it for the
18 ADEQ updates.

19 The next agenda item which is fairly significant
20 since our last meeting, the Technical and Financial
21 Subcommittee Update. That is going to be presented by
22 Andrea Martincic, the Financial Subcommittee Chairperson.

23 We did have a great turnout at that meeting and
24 we also had good participation by the Commission members.
25 So I appreciate everybody's involvement.

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1 MS. MARTINCIC: So basically we had a joint
2 subcommittee meeting on October 13th.

3 We tried to distribute a summary. Hal
4 summarized the results of that meeting sort of --

5 Basically what we did is we went -- we started
6 the meeting with a presentation by ADEQ and they kind of
7 went through what they saw as some new issues that are
8 part of the SAF rule.

9 And then they left and then we spent the bulk of
10 the meeting going through the rule as a group and
11 identifying issues and basically sort of capturing all
12 those issues.

13 And then we went through and prioritized high,
14 medium, and low. And unfortunately a lot of them were
15 high. So this is like a seven-page summary that Hal did.

16 I'll go through and just kind of outline the
17 issues that were identified. I won't go through the sort
18 of detail of the issues. But I'll do that because I
19 don't know how many people received this.

20 So the first issue which was a high priority
21 issue really dealt with the time line issue for the rule
22 and the time frame that the regulated community is given
23 to provide public comments at this stage.

24 And, you know, I think the consensus at the
25 meeting was that, you know, there's just so many issues

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1 and so many unknowns at this point with this rule that
2 it's difficult to provide thorough comments.

3 The 2nd issue had to do with definitions in the
4 rule. There were a lot of definitions which were not
5 adequately defined that the regulated community was
6 confused about.

7 The 3rd issue had to do with statutory
8 conflicts. The regulated community identified a number
9 of citations sort of in the SAF rule that seem to
10 conflict with existing statute.

11 The 4th issue had to do with financial impacts.
12 Some of the new issues that are in the SAF rule proposed
13 by ADEQ will have a financial impact on members of the
14 regulated community.

15 The 5th issue identified had to do with
16 eligibility.

17 The 6th issue had to do with substitution
18 requests.

19 The 7th issue was about RBCA Tier II
20 assessments.

21 The 8th issue was termination of work plans.

22 The 9th issue had to do with engineering control
23 maintenance costs related to the DUER.

24 The 10th issue had to do with retroactivity.

25 And the group felt that was a pretty major issue because

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1 the way the SAF rule is written right now, it basically
2 applies to anything that's inhouse at ADEQ at the time of
3 the rule becoming effective. So that was sort of a big
4 one for everyone.

5 The 11th issue was enforcing policy and Guidance
6 in the rule.

7 The 12th issue had to do with payments limited
8 by timing and the timeliness of submittals and documents.

9 The 13th issue is licensing time frames.

10 The 14th, appeal process, severability.

11 The 15th issue was on use of registration and
12 professional seals which was something new in the new SAF
13 rule, proposed rule.

14 The 16th issue had to do with certification
15 statements throughout the rule.

16 The 17th was cost incurred and the definition of
17 incurred.

18 The 18th, application completeness and
19 resubmittal.

20 The 19th, volunteer determination.

21 And 20th, work product.

22 So as you can see, there were a lot of issues
23 that were identified. It was a 4- or 5-hour meeting and

24 a number of the Commission members came which I was very
25 grateful for. And hopefully everybody got a lot out of

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1 that meeting.

2 So like I said, we captured all the issues. We
3 kind of talked about them as a group and then we worked
4 to prioritize them.

5 Once we realized we were running out of time and
6 we hadn't, you know, maybe gotten into as much detail as
7 we wanted on all of the issues, we realized we needed to
8 really focus and prioritize for this Commission meeting
9 so that we could have something put together to submit to
10 ADEQ since their deadline is essentially next Monday for
11 comments.

12 So along those lines, we basically took sort of
13 what we saw as the main issues from that master list and
14 drafted a letter for the Commission members to look at
15 and vote on. Basically, this would be a letter the
16 Commission would send to the director of ADEQ in response
17 to this proposed SAF rule.

18 CHAIRPERSON CLEMENT: Just one other thing I
19 would want to add here is, this list, this laundry list
20 of issues, these are not Policy Commission suggestions or
21 recommendations at this point in time.

22 This is just capturing all of the -- attempting

23 to capture all of the issues and discussions we had. We
24 are not blessing this or saying these are all of our
25 issues or that they are correct or incorrect.

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1 MS. MARTINCIC: It was really a group effort
2 from everybody that was at the meeting. So I mean, it
3 was operators, owners, consultants, some Commission
4 members were there. It was a group of folks.

5 And I mean, like Gail said, it was sort of a
6 brainstorming session and going through the rule and just
7 trying to identify as many of the issues as we could.

8 CHAIRPERSON CLEMENT: So just to caution people,
9 this is what we came up with from that meeting but this
10 is not given a Commission blessing just because we
11 compiled it.

12 For the record, could we note that Myron Smith
13 has joined the meeting. And, Mr. Beal?

14 MR. BEAL: Yes. I'd like to point out that the
15 laundry list is an incomplete laundry list. We really
16 put the rush on generalizations but it was far from being
17 done.

18 MS. MARTINCIC: Right. I mean, I think we only
19 got through to maybe, like, number 8, I think; in other
20 words, of really discussing the issue and trying to get
21 some detail for it. So we identified almost, like, 20, I
22 think.

23 MR. BEAL: There's quite a few topics.

24 MS. MARTINCIC: And what we tried to do was
25 think of some of those issues that could be lumped

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1 together to sort of, you know, consolidate the list.

2 And so that's what we did in trying to get
3 something together for this meeting for the Commission
4 members to send off to ADEQ.

5 Do we want to open the meeting part up for
6 questions first before I get into the proposed
7 recommendation for the Commission members, maybe?

8 I mean, if anyone has questions about that
9 meeting, we'll go ahead and do it now and that way it's
10 all kind of together.

11 CHAIRPERSON CLEMENT: Are there any public
12 comments at this juncture about the meeting and about the
13 summary items? And if there are, could you make sure you
14 fill out a speaker form so we just have a record of who
15 spoke, if anybody has any comments at this point.

16 MS. MARTINCIC: And if there weren't enough
17 copies of this, get your e-mail to Al and we'll get this
18 distributed to everyone. It's just kind of a summary of
19 everything that went on in that marathon meeting.

20 Does anyone have a comment?

21 MR. BEAL: I do. And I hope Phil is listening
22 on this part of it because it was very brave of him to

23 leave the room and allow us to talk. And I appreciate
24 that because I think we got a lot of things on the table.

25 However, I hear you asking for specifics, and I

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1 hope you're hearing that there were so many items that
2 specifics, out of this meeting in the time we had,
3 couldn't be provided. And that is the number one topic
4 that seems to be reoccurring.

5 So I know you've got the November 1st deadline
6 but if I had a comment from that, we just didn't have
7 enough meeting to get you the kind of things that you're
8 looking for. Thank you.

9 MS. MARTINCIC: Yes. Essentially, we just had
10 one meeting in the time frame before comments are due.

11 So I guess, along those lines, I guess I should
12 read this out loud, I guess.

13 CHAIRPERSON CLEMENT: Yes.

14 MS. MARTINCIC: This is what the joint
15 subcommittees, the Financial and Technical Subcommittees
16 are recommended, that as a Commission we approve this
17 document to send to ADEQ in response to the proposed SAF
18 rule. So I'll just read the letter.

19 "Dear Director Owens, pursuant to our statutory
20 requirements, the Arizona Underground Storage Tank Policy
21 Commission is submitting the following recommendations

22 for your review and consideration concerning ADEQ's
23 proposed State Assurance Fund draft rule distributed on
24 October 1st to Commission members and stakeholders."

25 And then just a reference to the meeting of the

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1 13th.

2 "We would like to see these issues resolved
3 before the draft rule is submitted to GRRRC. The issues
4 are highlighted below."

5 The first is the time frame of the proposed SAF
6 rule process in relationship to future cost schedule.

7 "The current time line for the draft rule
8 development is inadequate for Commission members and the
9 public to provide thoughtful comments on the entire
10 proposed SAF rule.

11 "In part, the problem at the current time line
12 is the absence of information regarding the future cost
13 schedule.

14 "The draft SAF rule is closely linked to the
15 future cost schedule which is to include descriptions of
16 tasks, incremental costs, and the phases of corrective
17 action.

18 "ADEQ has told the Policy Commission
19 subcommittees that this key information will not be
20 available until the end of the year around December.

21 "The second issue. Retroactivity.

22 "The draft SAF rule states that the new rule
23 will apply to all claims that are in process.

24 "How can ADEQ expect the regulated community to
25 anticipate and be in compliance with a rule that is not

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1 final?

2 "The Policy Commission believes that the SAF
3 rule should not apply to those claims which are already
4 under review at ADEQ.

5 "Instead, the rule should only apply to
6 applications and requests submitted on or after the
7 effective date of the rule.

8 "This is fair to those applicants who have
9 claims currently under review at ADEQ since the draft SAF
10 rule as written will have significant negative
11 consequences.

12 "Removing the retroactivity clause also provides
13 an incentive for ADEQ to continue processing claims in a
14 timely manner during the SAF rule process which
15 ultimately results in more sites being cleaned up.

16 "The third issue. Definitions.

17 "The Policy Commission cannot adequately review
18 the draft SAF rule unless we better understand the
19 definitions, particularly new terms which are not
20 currently being used in the State Assurance Fund program
21 and how they may relate with the cost schedule.

22 "The fourth issue. Statutory conflicts.

23 "The Policy Commission has identified a number
24 of statutory conflicts throughout the draft SAF rule.
25 Inconsistencies appear to be quite significant and the

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1 Policy Commission members believe that these issues
2 should be addressed before the draft rule is submitted to
3 the Secretary of State's Office.

4 And then the final issue has to do with
5 financial impacts.

6 "A number of new changes to the SAF rule, these
7 are issues not addressed in the current SAF rule and will
8 have significant negative financial impacts on
9 owner-operators throughout Arizona.

10 "These changes include" -- the first one is the
11 requirement for certified audits.

12 "It's going to create a major hardship for small
13 companies who will have to seek out a certified auditor.

14 "The second issue is the inability to resubmit
15 claims when an eligible person has failed to timely
16 appeal for the application or request or component and
17 the Commission feels its unfair to owner-operators and
18 creates a financial impact.

19 "The third issue is the requirement for original
20 invoices and that that places an unnecessary burden on
21 businesses which need to retain their original invoices

22 for tax purposes.

23 And then the fourth financial impact identified
24 was "The requirement of task completion for payment
25 without further defining the term task within the SAF

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1 rule is problematic for owner-operators who need to
2 understand up front what the SAF is going to cover and
3 then essentially creates a situation where
4 owner-operators don't know what they are going to be able
5 to submit for reimbursement."

6 And I believe it is in direct conflict with the
7 State Assurance Fund's purpose.

8 "So, in summary, regarding the above issues, the
9 Policy Commission requests that ADEQ extend the submittal
10 date of the rule to the Secretary of State's Office by a
11 minimum of two months or until the Commission members and
12 the public have had a reasonable amount of time to review
13 the cost schedule and the associated descriptions for
14 tasks, incremental costs, and phases of corrective
15 action.

16 "In addition, the Commission requests that ADEQ
17 hold a minimum of two additional stakeholder meetings
18 with ADEQ staff present, one meeting to address the
19 issues identified in this letter and a second meeting to
20 provide the regulated community with a revised draft SAF
21 rule with any additional incorporated stakeholder

22 comments."

23 And then our niceties at the end, that we
24 appreciate the efforts ADEQ has made in bringing this
25 proposed rule to the table and that we look forward to

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1 working with them in getting it all resolved quickly.

2 So that's basically what we would like to send,
3 the joint subcommittees' message to the Agency, and
4 asking just, essentially, for a little more time and some
5 more public meetings because, you know, there were so
6 many issues identified at this one meeting that we really
7 feel it warrants some additional meetings.

8 And some input from ADEQ, we feel, would be
9 helpful to the stakeholders.

10 CHAIRPERSON CLEMENT: We will, as a Commission,
11 need to look at this letter and vote on it today or a
12 version of it today and whether we want to send this up
13 to the director.

14 So in order to do that in a timely and
15 reasonable process, would you like to take -- and this is
16 what I'm asking the Commission members -- each paragraph
17 and approve it or each recommendation and approve it?

18 Or do we want to look at the letter as a whole
19 document at this point in time? And I really want input
20 from the Commission on that.

21 MR. SMITH: I think the document needs to be

22 kept as a whole. I think we can talk about each
23 paragraph but I don't want to split them out. I think it
24 needs to be as a document.

25 CHAIRPERSON CLEMENT: Is there any additional

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1 comment or discussion on that suggestion?

2 I personally agree with Mr. Smith's
3 recommendation on keeping the document as a whole and the
4 vote as a whole. And then to facilitate discussion,
5 though, we can break it up into its sections.

6 Is there any disagreement with that or concern
7 about that approach? Okay.

8 MS. MARTINCIC: Do we have issues identified in
9 the letter?

10 CHAIRPERSON CLEMENT: Well, let's start at the
11 very beginning. And I would just -- since I will be
12 signing this, I would just suggest that we put a subject
13 in here RE: Rules, the reference to the draft rule so
14 it's very clear what we're talking about up front.

15 And that was my only change or suggestion, that
16 we'd say "Regarding proposed draft SAF" or "State
17 Assurance Fund Draft Rule" and that we would have in
18 parens the same thing that's repeated in the first
19 paragraph, the citation.

20 And is there any questions about that suggestion
21 or change to the letter?

22 Okay. Mr. O'Hara.

23 MR. O'HARA: A question on the form.

24 Is our recommendation specifically the paragraph
25 in bold, page 2?

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1 MS. MARTINCIC: Yes.

2 MR. O'HARA: And this is more background? I
3 just wanted to kind of clarify what the recommendation
4 is.

5 CHAIRPERSON CLEMENT: I think it's two fold. I
6 think these are the issues that we prioritized as a
7 consequence of that meeting and tried to summarize those
8 key components of those comments.

9 And then the second component is regarding the
10 issues we have identified, here's a process that we
11 recommend to resolve these issues.

12 MR. O'HARA: So our recommendation is basically
13 this section, to postpone --

14 CHAIRPERSON CLEMENT: I think it would be both.
15 I think we have to agree --

16 MS. MARTINCIC: These are the main issues and
17 that, in regards to these issues, we'd like more
18 meetings.

19 MR. BEAL: I think it's important to state that
20 we didn't get completed in our meeting with the issues
21 and this might not be the total of the issues that we

22 feel are important at some point, you know.

23 It's certainly good, the first 50 percent, but
24 the other 20 items that we looked at aren't here. They
25 are not developed with any substance at all, even in

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1 generalities.

2 We just had to skip to the chase, so to speak,
3 and finish up and have to have something to present.

4 MS. MARTINCIC: I'd be willing to say, some of
5 these main issues are highlighted below because I
6 think -- and my impression, correct me if I'm wrong
7 because I know there were other Commission members at
8 this meeting, but we identified the 20 issues.

9 But at the same time, while that was not an
10 exhaustive list, we did discuss and pull these issues out
11 as being the highest of the high priority.

12 And I know that that list of 20 had a lot of
13 high priorities with various people in the meeting.

14 But I think that we did have a discussion as a
15 group about what were the largest issues that the
16 Commission as a whole should focus on and that, you know,
17 other stakeholders and other folks in the regulated
18 community can then take on some of those other issues
19 that were identified in the meeting in their particular
20 comments because some of those were more specific to, you
21 know, various stakeholders, not necessarily as maybe a

22 big picture and main issues.

23 MR. BEAL: Well, I think that's -- you're
24 correct in your statements and I don't have a problem
25 with that. I'm just trying to --

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1 I don't feel that we necessarily identified all
2 the issues that we wished to talk about and this letter
3 shouldn't represent itself as being the summary of our
4 issues, only that there may be others that have yet to be
5 identified because the time frame was so expedited.

6 MS. MARTINCIC: So we could amend that second
7 paragraph on the front to just say some of these issues
8 are highlighted below.

9 CHAIRPERSON CLEMENT: That's a good suggestion.
10 Any other comments on the preliminary introduction?

11 Then let's go into the first issue which is the
12 time frame. Any comments on this first issue? Any
13 changes, recommendations, discussion?

14 Okay. Retroactivity is the issue next issue we
15 have identified. Any changes, comments, discussion?

16 I want to make sure I'm giving everybody enough
17 time to do a final review here.

18 Are we ready to move on to the next issue?

19 Definitions. Changes, comments, discussion?

20 Ready to move on? Ready to move on.

21 Statutory conflicts. And just a comment on
22 this, Mr. Smith?

23 MR. SMITH: Just a quick thought and a comment.

24 To make it a little more documented for the
25 director, should we, at least under statutory comments,

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1 should we list what we came up with?

2 MS. MARTINCIC: Hal and I had that discussion
3 and we were trying to decide whether we needed to list
4 the actual statutory conflicts that we thought existed or
5 that were brought up.

6 And we sort of felt like it made more sense to
7 not do that because that's probably going to be for the
8 lawyers to do and we wanted to get this out without
9 having to wait on trying to get the lawyers to agree on
10 which specific statutes. But I mean, we did talk about
11 that and we just had opted --

12 MR. SMITH: Maybe a sentence in there to say,
13 you know, after the last sentence, follow-up letter or,
14 you know, some type of follow-up detail of exactly what
15 we think is in conflict?

16 CHAIRPERSON CLEMENT: Just on that point, it is
17 so awkward as a Commission, frankly, to try to develop
18 any kind of detailed piece of work because we have to do
19 everything in the open which is totally acceptable but it
20 makes it very awkward and so we have to do it in these

21 very formal public meetings.

22 And I agree with you, Myron. The best thing
23 would be to be able to put the specifics in here but we
24 have to recognize that either today or at another meeting
25 we will have to work together on those specifics because

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1 we have to discuss in an open format.

2 MS. MARTINCIC: I think that's why we were
3 hoping in one of the future meetings that we're
4 requesting of ADEQ that maybe that could be fleshed out.

5 CHAIRPERSON CLEMENT: Mr. McNeely.

6 MR. MCNEELY: I agree with Myron, that the
7 definitions and the statutory -- it's really not helpful
8 to me. It won't be helpful to the director but I'm
9 hoping -- and we still have the November 1st deadline.

10 So if you're going to put in there additional
11 dates, you're assuming that we're going to extend that.
12 It's not necessarily agreed upon yet.

13 I'm hoping the public -- and there's a lot of
14 people that have read the rules. You know, it's been out
15 there for 27 days. I'm sure they know the citations. I
16 know you guys talked about some of it.

17 But a more detailed letter, the better for me.
18 So write detailed letters. I don't care if they're 24
19 pages long. They help me out because for me to go and
20 figure out what conflicts -- I mean, I have to go through

21 the whole rule and start from scratch again.

22 So tell me, if you seeing something, help us out
23 and we'll look at it.

24 MS. MARTINCIC: I would just say that the other
25 reason I left it out when I drafted this letter, in

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1 consulting with Hal and after the meeting and everything,
2 is that, you know, within the meeting, this joint
3 subcommittee meeting, you know, different people had
4 different ideas about which definitions truly were the
5 most important or which ones didn't make sense.

6 And the same with the statutory conflicts. I
7 mean, different stakeholders are going to have a
8 different way of prioritizing which of those statutory
9 perceived conflicts or whatever are more important.

10 And so that was another reason why I felt it was
11 best to leave the specifics off of this letter and allow
12 the individual regulated community members to include
13 that kind of specific information in their comments.

14 I know it's a risk if they don't. Then, yes,
15 you guys are kind of at a little disadvantage there.

16 But I felt pretty confident after that meeting
17 that people will be submitting their own individual
18 comments and probably give specifics.

19 CHAIRPERSON CLEMENT: I mean, our option right
20 now is if we want to get a letter into ADEQ before the

21 1st, which I think, clearly, is one of our primary
22 objectives here, we either leave it more general or we
23 take the time today to identify specifics.

24 And I'm a little uncomfortable because Hal isn't
25 with us. He had more of the detail down on this than I

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1 certainly do. And we don't have the advantage of him
2 participating today.

3 MR. SMITH: Well, maybe what we could do is just
4 simply state that detail will follow.

5 CHAIRPERSON CLEMENT: The Policy Commission will
6 be providing additional details in a subsequent -- which,
7 again, given their time frame --

8 Let's just talk this through. Given their time
9 frame, if they are only accepting comments to November
10 1st, we obviously won't have those details in before
11 then.

12 So the risk we take as a Commission is, we send
13 this in with a general, you know, tone, now and then we
14 supplement it at a later point in time with additional
15 details which they, the DEQ, may or may not think is an
16 appropriate time frame. So that's the risk we take.

17 MS. MARTINCIC: Well, and the other thing, in my
18 mind, you know, what we're really asking for is some more
19 time and some more meetings.

20 And, you know, to me, this letter's not about

21 correcting the entire SAF rule with this one letter. I
22 think really my, you know, initial reaction is that we're
23 asking for some more time and for some more meetings to
24 flesh out the details and to really, you know, get into
25 more specifics.

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1 Because, you know, the bulk of that five-hour
2 meeting was just identifying issues and we didn't have a
3 lot of time to get real specific.

4 And I think one meeting, you know, I think
5 that's sort of the purpose of this letter is that one
6 meeting is not going to get us there and it's inadequate.

7 So, in my mind, the real purpose of the letter
8 is just to kind of ask for, hey, let's have some more
9 time and let's have some more meetings.

10 CHAIRPERSON CLEMENT: If we add that sentence,
11 would it be added to the final paragraph or near the
12 final paragraph versus just in this section?

13 I think that would be more appropriate.

14 MR. SMITH: I would agree with that.

15 MS. MARTINCIC: We could add something like,
16 request additional meetings. We could add something like
17 "identified in this letter" and to, you know, add
18 something about getting more specific details or
19 something.

20 CHAIRPERSON CLEMENT: And you'll give us that

21 when we get to that section.

22 Ms. Foster?

23 MS. FOSTER: Madam Chair, I have a problem here.
24 We're talking about statutory conflicts. And one of the
25 major issues that I found in the rule was ADEQ attempting

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1 to enforce policy and Guidance in the rule where policy
2 and Guidance -- but we're not even talking about it here.
3 And to me that's a statutory conflict.

4 ADEQ does not have the right to have a policy
5 and Guidance document in force in this rule.

6 CHAIRPERSON CLEMENT: Do you want to add a
7 sentence under statutory conflicts?

8 MS. FOSTER: That's what I suggest.

9 CHAIRPERSON CLEMENT: Okay. Do you want to help
10 craft that because I'm struggling with it.

11 MS. FOSTER: It could be as simple as, one of
12 the statutory conflicts is the request from ADEQ to
13 enforce policy and Guidance as statute. It could be
14 something that simple.

15 CHAIRPERSON CLEMENT: I'm writing a suggested
16 sentence.

17 MS. MARTINCIC: We have identified a number of
18 statutory conflicts throughout the draft SAF rule as well
19 as ADEQ's attempt to enforce Guidance through this rule.

20 MS. FOSTER: That's acceptable, yes.

21 CHAIRPERSON CLEMENT: Additional comments?

22 MS. MARTINCIC: Statutory conflicts. The Policy
23 Commission identified a number of statutory conflicts
24 throughout the draft SAF rule as well as ADEQ's attempt
25 to enforce Guidance through this proposed rule. The

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1 inconsistencies appear to be quite significant.

2 MS. FOSTER: Yes.

3 CHAIRPERSON CLEMENT: Okay. Moving on.

4 Financial impacts. And I just want to make a comment
5 about financial impacts.

6 There are financial impacts that appear to be
7 really focused in some ways on the smaller companies.

8 And I just caution the Agency not to build a
9 program that eliminates either a competitive environment
10 for small firms or in some way those small owners and
11 operators that have the greatest need for access to the
12 fund, creating additional road blocks for that access.

13 And I just caution the Agency, those are kind of
14 some themes I saw in reading this as we move into this
15 financial impact section.

16 The first point is the certified audit
17 requirements. Any comments or discussion on that?

18 Number two, I think that we need to -- that
19 doesn't appear to be a complete sentence. So let me read
20 that. "The inability to resubmit claims when an

21 eligible person has failed to timely appeal for the
22 application, a request, or component is unfair and
23 capricious to owners and operators."

24 That doesn't read to me clearly.

25 MS. MARTINCIC: I think they were trying to

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1 capture in the meeting the fact that it was an appeal not
2 just on an application but on a request or a component of
3 the application, maybe.

4 I think that was what was trying to be captured
5 there. And I probably didn't do an adequate job of
6 expressing it in the letter.

7 So we can try to rework that. An application or
8 request slash component of an application.

9 CHAIRPERSON CLEMENT: Mr. Beal?

10 MR. BEAL: I believe that it probably is in

11 reference to the inability to resubmit a claim after it's
12 been denied because there hasn't been a timely appeal and
13 that's the thing that needs to get worked out.

14 CHAIRPERSON CLEMENT: With this language change,
15 does that capture that point in your mind, Roger?

16 MS. MARTINCIC: The inability to resubmit claims
17 when an eligible person has failed to timely appeal an
18 application or request slash component of an application.

19 MR. BEAL: Well, I think it does to me only

20 because I know what was said in the rule, but by itself
21 no, I mean, it doesn't.

22 The problem that they are talking about is the
23 ability to resubmit a claim that's been denied because it
24 wasn't timely appealed in a timely manner.

25 That's the concern. In the past if something

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1 was incomplete, I believe they were able to resubmit it.

2 And now the resubmittals aren't going to be allowed.

3 MS. MARTINCIC: The inability to resubmit a
4 claim because it wasn't appealed in a timely manner?

5 MR. BEAL: That's done it for me.

6 CHAIRPERSON CLEMENT: Any additional comments on
7 that discussion? Does that capture the point?

8 Say that again.

9 MS. MARTINCIC: The inability to resubmit a
10 claim because it wasn't appealed in a timely manner is
11 unfair and capricious to owner-operators.

12 CHAIRPERSON CLEMENT: Any additional comments?

13 Number three, the requirement for original
14 invoices places an unnecessary burden on businesses which
15 need to retain their original invoices for tax, and I
16 would insert "or other purposes."

17 Any questions, comments, discussion?

18 Four, the requirement of task completion for
19 payment without further defining the term task within the

20 SAF rule is problematic for owner-operators who need to
21 understand up front what the SAF rule will cover,
22 creating a situation where owners and operators do not
23 know when they are able to submit for reimbursement is in
24 direct conflict with the State Assurance Fund's purpose.

25 Any discussion on that? Mr. Beal?

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1 MR. BEAL: Yes. On the whole section, as a
2 small owner operator, I'd like it to be in bold,
3 underlined print. I'm being a little silly there.

4 CHAIRPERSON CLEMENT: I think we understand your
5 concern.

6 MR. BEAL: This is a mega impact for the small
7 owner-operators.

8 CHAIRPERSON CLEMENT: Uncertainty about those
9 definitions really is almost asking for the regulated
10 community to find blind faith.

11 MR. BEAL: I mean, from financial impacts down
12 to the bottom of this paragraph, it's very devastating,
13 potentially.

14 MS. MARTINCIC: I changed that last bold
15 paragraph to incorporate Myron's comments.

16 Do you want me to reread that?

17 CHAIRPERSON CLEMENT: Yes.

18 MS. MARTINCIC: It basically reads the same up
19 until, "In addition, the Commission also requests that

20 ADEQ hold a minimum of two additional stakeholder
21 meetings with ADEQ staff present, one meeting to address
22 the issues identified in this letter and to further
23 clarify inadequate definitions and specific statutory
24 conflicts."

25 "And then a second meeting to provide the

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1 regulated community with a revised draft SAF rule with
2 any additional incorporated stakeholder comments."

3 Do you think that kind of covers what you meant?

4 CHAIRPERSON CLEMENT: Any questions, comments,
5 discussion on that last paragraph or second-to-last
6 paragraph? Now we go to the niceties, as Andrea said,
7 and which we mean sincerely.

8 Any questions or comments on the niceties?

9 Discussion? Okay. Any additional discussion on
10 this letter in any way, shape or form by the Policy
11 Commission members?

12 MS. MARTINCIC: Since these issues were based on
13 our joint subcommittee meeting, if anyone in the public
14 has a comment, I am, in particular, interested in that
15 second, financial impact, which we find kind of
16 shortened, leaving anything out by just saying it's
17 because it wasn't appealed in a timely manner or any of
18 the other issues, if anyone has comments.

19 CHAIRPERSON CLEMENT: Mr. Vannais. And just for

20 the record, please fill out a comment card too, please.

21 MR. VANNAIS: Leon Vannais. I would just
22 encourage the Policy Commission to also consider the
23 impacts to volunteers or private property owners also
24 because they will be just as adversely affected by some
25 of the provisions in this proposed rule.

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1 These private property owners cannot possibly,
2 you know, afford to do certified statements in the manner
3 which is prescribed in the rule and other things.

4 So when you're speaking of owner-operators, I
5 would just ask the Policy Commission to consider
6 volunteers also.

7 CHAIRPERSON CLEMENT: I believe what Mr. Vannais
8 was suggesting was in that lead-in sentence when it
9 says --

10 MS. MARTINCIC: And volunteers.

11 CHAIRPERSON CLEMENT: Would capture that
12 component. Is there any discussion of that?

13 I suggest that we add that in at this juncture
14 and then we'll take a vote.

15 Any other public comments on this letter at this
16 point in time?

17 Okay. We have on the agenda that we will
18 actually formally vote on this recommendation as revised
19 during this meeting.

20 MS. MARTINCIC: Shall we go through the revision
21 one last time?

22 CHAIRPERSON CLEMENT: That would be great.

23 MS. MARTINCIC: So on the front page after the
24 address we'll have just a line regarding, you know,
25 proposed SAF draft rule and site the rule citation.

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1 Then in the second paragraph of the letter it
2 will say some of these -- some of the main issues are
3 highlighted below and then under statutory conflicts we
4 are adding in the first sentence, the Policy Commission
5 identified a number of statutory conflicts throughout the
6 draft SAF rule as well as ADEQ's attempt to enforce
7 Guidance through this proposed rule, period, end of
8 sentence.

9 And then on the second page we are adding, we're
10 going to clarify financial impacts on owner slash
11 operators and volunteers.

12 And then the second sentence under financial
13 impacts has been changed to "the inability to resubmit a
14 claim because it wasn't appealed in a timely manner."

15 And then the third one was amended to add "for
16 tax or other purposes."

17 And then in the last or in the bold paragraph,
18 "stakeholders meetings of the staff present," period.

19 New sentence.

20 "One meeting to address the issues identified in
21 this letter and to further clarify inadequate definitions
22 and specific statutory conflicts." End of sentence.

23 New sentence.

24 "A second meeting to provide..." and then it
25 continues on with the rest of that sentence.

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1 CHAIRPERSON CLEMENT: Okay. Are we ready for a
2 motion to approve? Any additional discussion before we
3 go on? Is there a motion to approve?

4 MR. BEAL: I move we approve this letter.

5 CHAIRPERSON CLEMENT: Second?

6 MR. SMITH: I will second it.

7 CHAIRPERSON CLEMENT: All in favor?

8 (Affirmative response)

9 CHAIRPERSON CLEMENT: All opposed?

10 All abstaining?

11 MS. HUDDLESTON: Yes.

12 CHAIRPERSON CLEMENT: And I do know if we had
13 been able to get Hal Gill in attendance by telephone, he
14 was very much in support of this, and I want that as part
15 of the record, even though he could not formally vote
16 because of the inability to be contacted by telephone
17 today.

18 Also Mr. George Tsiolis who is up in another
19 conflicting meeting was also in favor of this draft

20 letter and, again, could not formally participate because
21 there was a meeting held in conflict.

22 MS. MARTINCIC: I will incorporate these
23 changes, Gail, and you can sign it.

24 CHAIRPERSON CLEMENT: Just as an administrative
25 thing, we don't have any kind of letterhead. We just

0051

1 send them out a blank one like this?

2 MR. SMITH: When I was chairperson, I just
3 simply put the AZ UST Policy Commission in bold on top of
4 the letterhead. I made my own letterhead.

5 CHAIRPERSON CLEMENT: I think I can handle that.

6 And we'll probably try to turn this around today
7 so it'll definitely be in the director's hand, probably
8 fax out a copy and then mail it out regular mail.

9 Let's see. We have now the summary of meeting
10 action items. Okay. Of the summary of meeting action
11 items, we have requested agencies to keep us informed
12 about the money flow-through in both Maricopa nonMaricopa
13 County and the SAF funds.

14 We have a request to keep the Policy Commission
15 informed about the risk assessment and the risk
16 assessment software.

17 We have a request to the Agency to provide us
18 information regarding any public meetings or items
19 resulting from the meeting in Holbrook or the Route 66

20 initiative.

21 We have an action item for the Policy Commission
22 itself to get out this letter to the Agency.

23 Those are the only ones that I capture.

24 Are there any other action items that I might
25 have not caught?

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1 I think that that's it and obviously the
2 continuing updates to the Commission.

3 Let's see. Discussion of agenda items for the
4 next Commission meeting.

5 As I mentioned earlier, we will have the AG's
6 Office provide us another sort of a review of process and
7 be sure that we're following all the requirements in
8 terms of the open meeting law, et cetera, and voting
9 process.

10 And we probably will hold that at the end of our
11 meeting in executive session so that we're not holding
12 anybody up from the regulated community.

13 Any other agenda items we want to be sure that
14 are on the next Policy Commission meeting besides our
15 normal ones?

16 MR. O'HARA: Just a question on our vote that we
17 just took. Are we expecting to get some type of response
18 from the director in a timely fashion so that we know
19 whether or not November 1st is the deadline?

20 CHAIRPERSON CLEMENT: I would expect that we
21 have to assume that for written comments November 1st the
22 deadline applies and that, pursuant to what Mr. McNeely
23 provided us in the beginning of this meeting, they will
24 provide us a response after that in terms of extending
25 the process or altering the process.

0053

1 MR. O'HARA: So from a Commission standpoint,
2 going forward, assuming that the deadline's not extended,
3 what does the Commission do in terms of making
4 recommendations on the rule?

5 CHAIRPERSON CLEMENT: I think we have to assume
6 that whether our comments are going to be accepted in a
7 formal process or not after November 1st, we need to
8 follow through on our obligation to the regulated
9 community and continue to hold meetings to further flesh
10 out any additional comments and specifics.

11 That would be my recommendation.

12 MR. O'HARA: The subcommittees will bring forth
13 to the full Commission the recommendations regarding the
14 rule's specific recommendations.

15 CHAIRPERSON CLEMENT: My recommendation would be
16 that we hold another joint meeting at the juncture where
17 we expect to hold the next technical subcommittee
18 meeting. And I don't have that in front of me.

19 MS. MARTINCIC: November 10th.

20 CHAIRPERSON CLEMENT: Mr. McNeely.

21 MR. MCNEELY: November 1st is the deadline.

22 Hopefully we'll get comments in. We'll look at them very
23 quickly and try to update you on what's going on.

24 But even with our current schedule to December
25 1st to GRRRC, I would encourage you to meet and get all

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1 your issues hashed out.

2 We'll be working early in November trying to
3 figure out which comments we can address, which ones we
4 don't agree with, which ones we do agree with.

5 We'll try to be pretty quick with the response.
6 About coming to one of your meetings and verbally talking
7 about it, I'm not sure which yet, depending on how many
8 comments we get. It may be pretty cumbersome to do a
9 written quickly, but the process, remember, even if it's
10 a formal process, I would still encourage input.

11 CHAIRPERSON CLEMENT: Just to add to that point,
12 Mr. McNeely, because we have encountered so many very
13 substantive comments on this rule package, that if you
14 want to just handle it in a formal way, it's going to be
15 very cumbersome and that's one of the reasons we're
16 encouraging additional informal meetings so that we can
17 process this stuff and that you're only dealing with, in
18 a formal manner, a much smaller universe of issues.

19 So we encourage you to consider that in light of
20 our future letter that you will be receiving.

21 MR. MCNEELY: It should be pretty close to
22 complete when you submit a rule to GRRC. We don't want
23 to have it completely changed because that will just send
24 us back to the drawing board if we completely change it.

25 So we're aware of that. We're also aware that

0055

1 you guys -- it would be very helpful to have the cost
2 ceilings or the cost schedules available to you.

3 And we're working on that and we're still
4 working on the rule on a weekly basis. We're still
5 working. It's not like we're sitting and waiting.

6 We're pushing the cost ceilings right now very
7 hard. We're pushing the rule. So we're working on it.
8 I'm going to wait until November 1st and see what we get
9 in writing.

10 CHAIRPERSON CLEMENT: Great. Thank you.
11 Additional agenda items? We will be having a report out
12 from the Technical Financial Subcommittee.

13 Do we need to vote to have a joint committee
14 meeting, subcommittee meeting again, or do we just --

15 How do we want to proceed with that?

16 MS. MARTINCIC: I don't know that we need to
17 vote on it. We didn't last time. I would propose that
18 we hold on it November 10th, though, to give us an extra

19 week since probably a lot of the regulated community's
20 working on their comments this week.

21 And I would suggest that we hold it on November
22 10th at 9:00 a.m.

23 And how large is that room, Al, 4001-B?

24 MR. JOHNSON: We'll have to find a different
25 venue. It probably won't be big enough.

0056

1 MS. MARTINCIC: Is that going to be a problem?

2 MR. JOHNSON: Don't know.

3 CHAIRPERSON CLEMENT: We had a productive
4 meeting. I would encourage as much participation as
5 possible. Not everybody agrees on everything. Obviously
6 we need to have all viewpoints at the table so we can
7 best represent these issues in a reasonable and
8 forthright fashion.

9 So we really encourage people to participate.
10 It was very helpful, the last meeting.

11 The other thing that isn't on here but I think I
12 can announce is that, and it's just a copy of a letter I
13 sent, gave to everybody today, is the Attorney General's
14 Office has a backup representative if Ms. Huddleston is
15 not available and that's been appointed as Ms.
16 Pashkowski, Barbara Pashkowski in this case.

17 If Tamara's not available, we will have a backup
18 from the AG's office which is helpful.

19 MS. MARTINCIC: Can we just be real clear and
20 reiterate that there will be no meeting on November 4th
21 so that everyone in the audience understands we're going
22 to have another point meeting of the Financial
23 Subcommittee and Technical Subcommittee and that'll be
24 held on November 10th.

25 And we'll probably have another big long meeting

0057

1 like we did last time since it's a big group and we'll
2 work on fleshing out the details on the issues of the
3 first meeting. And then we'll send notice out about the
4 actual location since we'll need to secure a larger room
5 for the meeting.

6 But just make a note that there is no meeting on
7 November 4th. The meeting will be on November 10th and
8 that'll be a joint meeting.

9 CHAIRPERSON CLEMENT: And before we adjourn we
10 have a last general call to the public.

11 Are there any additional comments, specific or
12 general in nature? Mr. Beck, I believe. John Beck.

13 MR. BECK: Yes. I have got several different
14 comments to make. The very first one is regarding the
15 Underground Storage Tank Conference that was held and the
16 presentation that was made by Ms. Rosie on the SAF and
17 some of the things that are going on.

18 She basically presented 17 new policies,

19 procedures or guidelines in that presentation. A lot of
20 them are reflected in the proposed rules and they have
21 never been presented before.

22 We think that what she presented and the way
23 that they were presented and what ADEQ is currently
24 doing, because they are actively utilizing these
25 particular things, directly violates 49-1014 and 1092

0058

1 which requires that the Policy Commission at least review
2 these things before they get implemented. And I have
3 some written documentation on that.

4 The second thing is on the cost ceilings. We
5 brought this up once before but I want to make it very
6 clear today that under the proposed cost ceilings that
7 are going to be coming down July 2005, we see a very big
8 problem coming up.

9 The first one is on existing preapproval and
10 work plans that are in effect and working right now.

11 If you read 1306 and what ADEQ has previously
12 said that, come annual one, when the new cost ceiling
13 comes into effect, that the cost in those preapproved
14 work plans disappear, they are no longer valid at that
15 particular moment in time.

16 What we have asked for the ADEQ is to come up
17 with a method of, how are we going to correct or deal

18 with the preapprovals with the new cost ceilings?

19 Are we going to be required to do massive
20 substitution waiver forms, which is not really effective,
21 or something that the Agency has previously suggested
22 which we find completely unacceptable in that the ADEQ
23 will invalidate all the preapproved work plans and
24 preapprovals and say that we have to presubmit them which
25 will create a massive nightmare? So there's that.

0059

1 The next item that we're seeing a problem with,
2 the SAF and UST people on SAF applications, I am too,
3 there's a full section on the application on who is
4 supposed to be an applicant contact for any questions
5 concerning -- or anything dealing with the applications.

6 We are seeing the ADEQ completely ignoring that,
7 either contacting the applicant in all responses or this
8 type of things or, in two specific cases, recently the
9 ADEQ went out, contacted an attorney which had not been
10 retained and asked them to deal with particular issues.

11 So we're having a problem on that particular
12 thing, that ADEQ is just not contacting the people that
13 are listed by the applicant for those particular
14 applications.

15 The last one that we have here is the SAF use of
16 applicant notification process as everyone that is aware
17 of the AN letters are to be issued by state law under

18 1052(B) within 45 days.

19 1052(B) basically says if the department
20 determines an application for direct payment or
21 reimbursement is incomplete, the department, within 45
22 days of the application, shall notify the owner-operators
23 and provide additional information within 30 days.

24 ADEQ issues these AN letters all the way out to
25 120 days, delaying the entire application process.

0060

1 Recently in the last 30 days we have received
2 two AN letters in the middle of informal appeals asking
3 for more information and, according to ADEQ and a
4 complete new definition, delays or stops the appeal
5 process time line to another delay, something that we
6 find completely unacceptable.

7 Those are my initial comments.

8 CHAIRPERSON CLEMENT: We appreciate very much
9 both the handouts and your comments.

10 Mr. Pearce?

11 MR. PEARCE: I'd like to ask the Policy
12 Commission to consider whether it would be appropriate
13 for it to give its attention to a problem that definitely
14 affects the program. I think it affects everyone, both
15 the department and owner-operators and volunteers and
16 property owners that have appeals.

17 And that's the growing issue that we have with
18 the lack of technical appeals panel members. My read on
19 the Policy Commission's scope --

20 My hope is that the Policy Commission can give
21 its attention to an issue regarding the lack of members
22 in the technical appeals panel.

23 My read is that the Policy Commission is
24 authorized to consider issues and make recommendations on
25 such matters because they are so central to the ability

0061

1 of the department to exercise its function to provide an
2 appeals process that's meaningful, timely, and
3 appropriate.

4 And what's happened is we are down to three
5 technical appeals panel members at the present time: Jim
6 Clark, Phil Schneider and Chet Pearson.

7 Apparently, a slate of names was submitted to
8 the governor's office at some point in the past. I don't
9 know when. I have not seen the slate. I don't know if
10 the public has seen the slate.

11 But my information is that the slate includes
12 people that are interested and willing to serve on the
13 panel. And that is, again, qualified people. And that
14 list is at the governor's office but there's been no
15 action taken on that list.

16 Meanwhile, things have ground to a halt at the

17 Office of Administrative Hearing.

18 The administrative law judge, Judge Strickland,
19 who was hearing these matters, has on numerous occasions,
20 personally, that I have been personally involved in,
21 asked myself and the Attorney General representing the
22 department in open hearings to try and do what we can to
23 aid in the problem as some of you at ADEQ have seen them
24 do.

25 Recently the Administrative Law Judge Strickland

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1 indicated that he was resigning from the -- or planned on
2 resigning from the Office of Administrative Hearings.

3 And he's no longer hearing underground storage
4 tank matters. And the information is, again, that that's
5 in part due to some frustration with the ability to get
6 these things scheduled and heard.

7 So there's a backlog on these things. It's a
8 backlog that's growing. It's going to get worse and
9 worse. We need two appeals panel members because it's a
10 major commitment on the part of any TAP member who sits
11 in hearing, as the chairperson will surely agree, having
12 been on the TAP yourself.

13 And expecting three people to hear all these
14 matters is totally unrealistic.

15 My hope would be that the Policy Commission can

16 perhaps author a letter and send it to the governor's
17 office advising the governor that this is a major issue.

18 It's an issue that we hope -- we understand your
19 schedule is very busy. We hope that it can rise to the
20 level that it gets some prompt attention and we can get
21 some names released so we can get some additional people
22 serving on the panel.

23 CHAIRPERSON CLEMENT: Thank you, Mr. Pearce.

24 MR. MCNEELY: The director did contact the
25 governor's office and made an appeal to process these

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1 names and I have been told by the governor's office that
2 she's contacted consultants and asking for applications
3 so they can process them.

4 That was as early as last week. People have
5 responded to the office with the application. They
6 should be approved very soon.

7 MR. PEARCE: Great. Thank you.

8 CHAIRPERSON CLEMENT: Thank you, Mr. McNeely.

9 Any other comments? Mr. Vannais?

10 MR. VANNAIS: I'd just like to reflect some of
11 Brian's comments earlier about implementing the proposed
12 rule before even the draft comment period or the filed
13 formal comment period as it's been implemented.

14 We have seen returned applications on very
15 insignificant matters as far as completeness of the

16 application that would normally be carried off and
17 corrected by the applicant notification period on a
18 number of claims.

19 I was a little surprised at first when I
20 received these and thought maybe it was an oversight.

21 But apparently a entire new template had been
22 developed by the State Assurance Fund Section to
23 specifically just return applications, which was not
24 something the State Assurance Fund is authorized to do
25 under current statute nor is in line with previous

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1 practice.

2 So again, and I had made the statement in the
3 combined technical and financial subcommittee meeting
4 imploring Mr. McNeely as the manager of the UST Section
5 to instruct his senior managers and his staff to not
6 attempt to enforce a draft rule before its effective
7 date. And you have given a commitment to the regulated
8 community that we would contact you to make sure this
9 doesn't happen. We're looking to you again.

10 Please. All it does is delay corrective
11 actions. It costs me a lot of money and attorney's fees.

12 That's just one example of the things that I'm
13 seeing as we go forward in this process.

14 And again, I implore you to please instruct your
15 staff not to implement this rule before it's been

16 promulgated.

17 CHAIRPERSON CLEMENT: Any additional public
18 comments?

19 MR. BEAL: I have just one. George Tsiolis
20 asked me to say he's sorry he couldn't be here because of
21 a conflict in the meeting schedule.

22 He hoped there is something that could be done
23 to not have conflicting meeting times in the future. It
24 was a choice he didn't want to make today.

25 MR. MCNEELY: We're having a solid waste

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1 stakeholder group meeting all through the fall so we'll
2 coordinate with the waste programs and make sure we don't
3 have it the same time frame.

4 CHAIRPERSON CLEMENT: That would be very
5 helpful. And if we could have full participation from
6 the Commission. We had a lot of important work to do.

7 The next meeting will be the November 10th UST
8 joint Technical and Financial and the location will be
9 identified. That meeting begins at 9:00 a.m.

10 The next Policy Commission will be November
11 17th, 2004 at 9:00 a.m. and we're going to be meeting in
12 the Carnegie Public Library basement which is that
13 building just across from ADEQ.

14 Don't kill yourself crossing the street but you
15 can park in the ADEQ parking lot and that meeting will

16 begin at 9:00 a.m.

17 And with no further discussion or comments, the
18 October 27, 2004 Policy Commission Meeting is adjourned.

19 Thank you.

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

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C E R T I F I C A T E

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

15

DATED at Phoenix, Arizona this 15th day of

16 November, 2004.

17

Clark L. Edwards
Certified Court Reporter
Certificate No. 50425

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