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ARI ZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY Commi ssi on

Phoeni x, Ari zona
January 26, 2005
9: 00 a. m.

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Second Fl oor
Phoeni x, Ari zona

Reported by:
Angela F. Miller, RPR
Certi fied Court Reporter, AZ50127

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COMMITTEE MEMBERS PRESENT:

- MS. GAIL CLEMENT, Chairperson
- MR. JON FINDLEY
- MR. MICHAEL O' HARA
- MS. ANDREA MARTINCI C
- MR. PHILIP McNEELY
- MS. KAREN GAYLORD
- MS. TAMARA HUDDLESTON
- MS. CYNTHI A CAMPBELL

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P R O C E E D I N G S

CHAIRPERSON CLEMENT: This is the January 26th, 2005 Underground Storage Tank Policy Commission meeting.

Good morning. We usually start on time. Usually only takes me an hour, not an hour-and-a-half to get here. So sorry about that.

Let's see, we've got some new members and we're going to do a roll call. And as we do the roll call, if you wouldn't mind giving us your background a little bit and who you're representing. And, Jon start with you.

MR. FINDLEY: All right, my name is Jon Findley. I'm here representing the Sierra Club. And more specifically I'm a member of the local group of the Sierra Club which is called the Palo Verde Group, which is as of recently the south part of Maricopa County. We have a new group that's in the northern part of Maricopa County. And I also represent the state level chapter which is the Grand Canyon Chapter. And I'm the energy chair for the Grand Canyon Chapter.

I'm originally from Iowa, so I'm Midwestern. Bachelor degree in biology from Drake University, and Bachelor of Arts in teaching from University of North Carolina, and Master of Science from George Washington University.

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CHAIRPERSON CLEMENT: Excellent.

MR. FINDLEY: And I've taught at the high school level, technical school and college level in environmental science and biology. And I've been in the valley almost 13 years now.

I've been involved with writing and editing EPA training materials on drinking water. And I think some of the vocabulary and some of the things we'll be talking about here will be familiar from my work with the drinking water standards for EPA.

CHAIRPERSON CLEMENT: All right, welcome Jon. We're very glad to have you. We've been missing the environmental. Basically, you're representing the environmental groups and issues. We've been missing that on the policy commission for some time, so we welcome you.

We're doing roll call.

MR. O'HARA: I'm sorry, Mike O'Hara.

MS. MARTINIC: Andrea Martinic.

CHAIRPERSON CLEMENT: Gail Clement.

MR. MCNEELY: Phil McNeely. We don't want to introduce ourselves?

CHAIRPERSON CLEMENT: Well, we should.

MR. O'HARA: Mike O'Hara. You want to introduce --

1

CHAIRPERSON CLEMENT: Who do you represent?

2 MR. O'HARA: I represent the public with people
3 with insurance and financial knowledge. And I've been
4 working with the fund since its inception in '92, both
5 on the DQ side as I work for the contractor preparing or
6 reviewing applications, and now working with
7 owner/operators to help them access the fund and get
8 reimbursement for the clean up.

9 MS. MARTINCIC: Andrea Martincic. I'm with
10 Arizona Petro Market Association. It's a nonprofit
11 trade association. I'm representing the mid-sized
12 owner/operator with the tank volume, number of tanks.
13 I'm relatively new to the Commission. I've been on two
14 years. Feels new -- well, I guess now it's old.

15 CHAIRPERSON CLEMENT: We're old, the old
16 timers.

17 MS. MARTINCIC: Welcome.

18 CHAIRPERSON CLEMENT: I'm Gail Clement. I'm
19 the current policy chair commission, and the commission
20 actually votes on who is their chairperson. We may want
21 to reconsider who the chairperson is and have another
22 vote. I've taken that task on for the last few months.

23 I represent the citizens of Arizona. I'm
24 actually an environmental consultant working for the
25 area of super fund and environmental quality; however, I

6

1 was at the agency '86 and '90 and drafted the litigation
2 that enabled the program.

3 MR. MCNEELY: I'm Phil McNeely. I'm with ADEQ.
4 I'm the director of the UST Tank Program. That's all.

5 MS. GAYLORD: I'm Karen Gaylord. This is only
6 my second meeting. I fill the slot for small operator
7 and I'm representing three entities that have one
8 station or have an interest in one station. I have
9 represented at least two of those folks for the last six
10 years on UST issues, so I'm looking forward to seeing
11 the new rule and participating in the Commission.

12 MS. HUDDLESTON: Tamara Huddleston. Section
13 chief of environmental enforcement section at the
14 Attorney General's Office.

15 MS. CAMPBELL: My name is Cynthia Campbell.
16 I'm representing -- appointed the environmental attorney
17 position on the Commission. I was an assistant attorney
18 general representing the UST program for three or four
19 years a little while back and since then I've been an
20 at-home mom and I'm back.

21 CHAIRPERSON CLEMENT: Welcome. We're very glad
22 to have the new members.

23 What we would really request for all the new
24 participants is your active involvement. There's a lot
25 of key issues, particularly the SAF insurance changes

7

1 being proposed. At this point in time, Phil will go
2 through them in a little more detail. There's a number
3 of challenges in the program that the state insurance

4 fund is phasing out. So, the number of reported release
5 and corrective action documents associated with those
6 are increasing. They all have the problems of on-going
7 staffing issue, etc., etc. We want to be positive
8 constructively involved with this program. And sitting
9 up here we do have some responsibility. So, I encourage
10 everybody to participate to keep the communication open.

11 Unfortunately we weren't able to get the
12 Attorney General's Office here with us today. We're
13 hoping they will be with us in February. Because as a
14 Commission we have to conduct everything in an open
15 meeting format which means very limited outside this
16 room or in the public forum communication. And they can
17 give us, certainly, a much better understanding of that
18 than I can. So, hoping to have them here in February.
19 And any other questions we have regarding the Commission
20 or Commission activities we will be able to propose at
21 that time.

22 The other thing I want to make sure
23 administratively is, is everybody getting the e-mails
24 that have the documentation that ADEQ puts together?

25 Cynthia is getting them.

8

1 Jon, have you had a chance?

2 MR. FINDLEY: Yes, Al got me on the list.

3 CHAIRPERSON CLEMENT: Distribution --

4 MR. FINDLEY: And I'm getting the e-mails.

5 CHAIRPERSON CLEMENT: Any other communication
6 or administrative issues that anybody is having any
7 problems with or concerns? Because, we can lay them
8 out.

9 I think -- Al, thank you and your staff. I
10 think everything is rolling pretty well. What my goal
11 is, is to get out a draft agenda for review by the
12 Commission members. If there's any particular agenda
13 items that you want to see on the Commission, we can
14 pull that forward and make sure we do get it on the
15 agenda. Because unless it's on the agenda, we can't
16 really talk to it in any kind of detail because we are a
17 public body.

18 Anything else we can cover?

19 Oh, we have two subcommittees, a financial
20 subcommittee which is chaired by Andrea Martincic, and a
21 technical subcommittee which is chaired by Hal Gill.
22 And Hal was not able to be with us today. Both of those
23 committees are very active. And in the last two
24 sessions they had joint meetings because they are the
25 discussions about the SAF rule and changes we hope to

9

1 see in the SAF rule. But we encourage all the
2 Commission members to participate with the subcommittee
3 members if at all possible, because the actual work is a
4 much less formal format. And the actual work of the
5 Commission actually gets done in those meetings.

6 So, if you want to have real involvement, I
7 think it's important to participate in the subcommittee
8 meetings as much as possible.

9 That's my intro spiel.

10 Okay, on to the actual agenda. Approval of
11 minutes from the December 2005 [sic] meeting. Did
12 everybody receive the meeting minutes? Any communities
13 concerns on the meeting minutes?

14 Is there a Commission motion to approve the
15 December 2004 committee meeting?

16 MR. MCNEELY: I move to approve the 2004
17 meeting minutes.

18 CHAIRPERSON CLEMENT: Second?

19 MR. O'HARA: I second.

20 CHAIRPERSON CLEMENT: All in favor?

21 (Chorus of ayes.)

22 CHAIRPERSON CLEMENT: All opposed?

23 (No response.)

24 CHAIRPERSON CLEMENT: Great. We have had the
25 introduction, and please, we do conduct the meeting as a

10

1 Commission meeting, if you would like to make a
2 statement please make sure you -- at least for this
3 point in time -- let me know and then I can ask you for
4 your statement.

5 I think that's -- I think that's about it for
6 as far as that. Should we get in the ADEQ updates?

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MR. MCNEELY: Sure.

CHAIRPERSON CLEMENT: The first will be the UST Program update. And the director of the program, Phil McNeely, will provide that.

MR. MCNEELY: Thank you. I'm Phil McNeely. If you notice in the meeting the way we organize is we have action items as the first main item. I'd like to go through every meeting and make sure we're doing the action items.

The first thing we're going to do is be committed to distributing the second draft of SAF rules on the week of December 20th to the state group. And we did do that on December 20th. We e-mailed to everyone.

In addition to that, we are also going to submit a call schedule and we did that with the same e-mail on December 20th. And the purpose of setting out the call schedule was to help you guys understand the definition of phase of work task and environmental work. And in the rules we refer to that and the definitions,

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and the concern is, what does that really mean? So, we sent an example out so everyone knows what agency is doing which phase of work task and environmental cost.

The second action item is to try to get the Attorney General's Office to do a presentation. And the person doing that was busy. So probably try that in February.

8 The third action item is get Jeanene Hanley our
9 risk assessor, to present to our Tier II software which
10 we've been working on diligently for quite some time.
11 And you guys will see we really do have software and it
12 does work. So she's going to do that presentation
13 today.

14 And after that, actually, the Commission had
15 action items. And I guess I won't cover the Commission
16 action items. Okay, I will cover the Commission action
17 items.

18 The Commission has determined meeting dates for
19 the subcommittee and I'm not sure if that's been done
20 yet.

21 MS. MARTINCIC: We met last week. Do you mean
22 continual meetings? I think those were already set.

23 MR. JOHNSON: I'm Al Johnson. We have them set
24 for the year. Basically it's the first Thursday of the
25 month for the financial subcommittee and the second

12

1 Wednesday of the month for the technical subcommittee.
2 And the financial subcommittee meetings' start time is 2
3 o'clock and the technical subcommittee meetings' start
4 time is 9 o'clock.

5 CHAIRPERSON CLEMENT: And we will continue to
6 use those dates as necessary, or if we're going to
7 combine meetings and people -- or the committee
8 chairperson is not available, we'll adjust those meeting

9 dates as necessary.

10 Do we have a handout today with that today? I

11 didn't check with all the dates.

12 MS. MARTINCIC: Yes or --

13 MR. JOHNSON: No, we don't.

14 CHAIRPERSON CLEMENT: Okay.

15 MR. JOHNSON: I can e-mail a summary of those

16 times.

17 CHAIRPERSON CLEMENT: Could you e-mail to all

18 the Commission members?

19 MR. JOHNSON: Yes.

20 CHAIRPERSON CLEMENT: And at the end of the

21 meeting we'll discuss when the next meeting will be

22 scheduled -- I did not hear from Hal. I don't know if

23 you have -- and if that is available for the public as

24 well.

25 MR. FINDLEY: It is on the Web. I printed it

13

1 out on the website.

2 MR. MCNEELY: The fifth action is discuss the

3 Commission goals on the January 2005 meeting. I don't

4 think that's on the agenda, so maybe we can do that in

5 February.

6 CHAIRPERSON CLEMENT: Everybody think about the

7 goals. I think I can probably talk about that for a

8 minute. We can't discuss in detail.

9 I think our main goal should be actively and

10 constructively involved in UST. And as issues evolve to
11 contact and help the agency to resolve the issues. The
12 state -- and highest priority, to state insurance fund
13 rules. And that's going to dictate really a lot of how
14 this program is operated in the near -- in the near
15 future.

16 MR. MCNEELY: And the last action item the
17 Commission will discuss is how to provide technical or
18 ADEQ technical. Which, I'm not clear on that action
19 item, but that's an ongoing issue which we are working
20 with and training our staff technically.

21 CHAIRPERSON CLEMENT: Hal is not here. I
22 looked at that and that was his point, so we'll wait on
23 that, Phil.

24 MR. MCNEELY: That's it for the action items.
25 I'll go into the program update. I'll give a little

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1 more overview for all the members. So, for everyone
2 else it will be a repeat for you.

3 Going to, Senate Bill 1306 is passed and that's
4 reforming the UST program. Significant items in that
5 bill was subsetting the SAF fund. And significant
6 dates, June 30th, 2006 is the last day a release will be
7 available for SAF.

8 That new release. That's very significant
9 because any new releases after June 30th, 2006 will
10 clean up the properties with owner/operator with only

11 financial responsibility. And part of our -- a lot of
12 our goals in this program are to implement the bill and
13 make sure we're ready for it. So, going to have to push
14 very hard to make sure financial responsibility that
15 every owner/operator has and is aware of, which they
16 should know because it's been in the books for a decade
17 approximately.

18 We've written a postcard and newsletter. We'll
19 continue to do that as a date gets closer and closer
20 during the tab inception inspection and as for financial
21 responsibility and tanks. So we'll make sure they're
22 keeping that as soon as very well they will need their
23 FR requirement.

24 On the second date is the significant date,
25 which is June 30th 2010, which is the last day a claim

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1 can be submitted for the SAF. That means right now we
2 have 2,127 sites that are open. All those sites need to
3 be cleaned up and claim submitted by June 30th, 2010.
4 That's a lot of work. So, initially Joe is trying to
5 streamline the process to get reports approved very
6 quickly, and committee action, and meet more with the
7 State and the owner/operator and have a clear idea of
8 what we want in terms of clean up. So, that's a huge
9 issue and big challenge for Joe and our staff. So
10 that's the goal, the ultimate goal, to clean all the
11 sites up by 2010.

12 Another -- there's a whole lot of other items
13 in that bill. One main thing was the volunteers on June
14 30th this year, 2005, volunteers have to go through the
15 pre-approval process. Once they spend \$100,000 at that
16 facility -- and there are quite a few volunteers out
17 there working, so they cannot do any work and get
18 reimbursed after June 30th this year if they don't have
19 a pre-approval. And that's one thing we're trying to do
20 with our rules. And I'll talk about that a little bit
21 to make a mechanism for that to implement that.

22 There's other stuff I want go into. And jump
23 to what SAF is trying to rewrite, the SAF rules, and
24 have them implemented as close to July 1st as possible.
25 The current rules are outdated. They were implemented

16

1 in 1993. We've had statute changes every single year
2 since that day, sometimes multiple statute changes in
3 the same year. Just the way things are done are not
4 quite in sync with the rules. So trying to redo the
5 rule to match with all the statutes and get ready for
6 subset of funds.

7 And part of the rules is trying to make the
8 rules a lot more, I think, user friendly -- and you guys
9 may disagree -- trying to make a lot more efficient for
10 the program to implement the rules.

11 Along with the rules is the cost scheduling.
12 We talked about the Senate Bill 1306 puts in statute

13 July 1st only the cost schedule. Right now we have a
14 cost schedule for multiple years, probably goes back six
15 or seven. So when we get a -- when the work was done
16 and contract was done, makes it very difficult to review
17 claims and inspect. July 1st this year when the cost
18 schedule is in the statute, we're trying to get our cost
19 schedule. We're redoing it right now and try and
20 actually get the call schedule out for public comment
21 and rule meetings in March. That goes along with all
22 the rules.

23 CHAIRPERSON CLEMENT: Question, is the process
24 of public review for cost schedule similar to the rule
25 itself? Does that have to go through a whole --

17

1 MR. MCNEELY: No, it's a completely different
2 process. The cost schedules are not rules. We're
3 coming out with the outline how we're going to do it and
4 be able to do the stake holders to work on descriptions
5 of cost schedules because that's where I think a lot of
6 confusion comes in, how we describe what the cost
7 schedule means.

8 CHAIRPERSON CLEMENT: Basically the development
9 and finalization of the new cost schedule is an
10 administrative process not subject to the formal rule
11 making?

12 MR. MCNEELY: That's correct.

13 CHAIRPERSON CLEMENT: Okay. Thanks.

14 MR. MCNEELY: Okay. So, in terms of -- I lost
15 my train of thought -- the cost schedule and SAF rules,
16 those are high priority right now. We've been working
17 on them very hard since the fall. Initially there was
18 one informal comment period October 1st. We gave out
19 the first draft, there was significant and significant
20 revisions to that. And there's informal comment to
21 January 30th. And December 20th we got the second draft
22 out.

23 Our intentions now are that the comment period
24 ends December 31st -- or January 31st, excuse me. Once
25 we get those comments, we don't plan on having another

18

1 informal comment period. We plan on redoing the
2 comments, revising the whole approval and submit to the
3 Secretary of State for the formal process. That will be
4 sometime in March. And have the rule -- formal rule
5 process to go through comment and make revisions that
6 way.

7 One more administrative thing we're doing, last
8 year in budget the legislature gave us \$500,000 outside
9 our cap to redo our database. Our database does not
10 help us track performance measure and does not help with
11 our process at SAF. So we've been working very, very
12 hard with a lot of computer programmers to get our
13 process down, put in a database, and have the database
14 streamline our process. That's a difficult task since

15 we're running the SAF rules and cost schedule and has to
16 be sort of done before the database. We're on schedule
17 to have it done in June, the database.

18 As you can tell, we have a lot of stuff on our
19 plate and a lot of work initially. And part of the
20 intent of the Tier II software and that will hopefully
21 help us close a lot of sites without too much confusion.
22 Because right now the sole rule looks up tables in Tier
23 I to close sites, and it's pretty straight forward. And
24 once we have exceedance of Tier I values, there's no
25 clear guidance how to do a Tier II. And this program

19

1 that Jeanene is going to show will simplify the program
2 -- simplify the whole process.

3 Well, that -- I think that's it for the program
4 update.

5 CHAIRPERSON CLEMENT: Great. And that was also
6 the SAF rule update also.

7 MR. MCNEELY: Questions?

8 CHAIRPERSON CLEMENT: Any questions on the
9 process of SAF rule?

10 Any discussion?

11 Okay. I know we will have further discussion
12 when Andrea presents the finding of the
13 technical/financial subcommittee.

14 The next ADEQ update is Joe Drosendahl. And
15 he's going to provide the corrective action monthly

16 update.

17 MR. DROSENDAHL: Yes, my name is Joe
18 Drosendahl. I'm the manager of the corrective action
19 section. Your packet that you have has the productivity
20 numbers for the last month. There's -- in the last few
21 months we've gotten a big insurge of certain reports.
22 This last month we got 13 site characterization reports.
23 So that increased our workload.

24 Corrective action plans back in August, we had
25 a big upsurge in CAPs being submitted, but we're

20

1 starting to get on top of those and those are starting
2 to come down.

3 Risk assessments. We still have, let's see, 14
4 risk assessments on Jeanene. As you can see, been
5 definitely busy. So hopefully we can get back on
6 looking at those.

7 Back in October we had a big insurge of LUST
8 case closure reports. But those seem to have tapered
9 off.

10 We are definitely, as Phil said, we are
11 differently working to, you know, streamline all our
12 processes to make these reviews, you know, a lot
13 quicker. One of the things we're doing right now as I
14 said in past months is we're revamping the format for
15 the corrective action plans. We're revising the new
16 format, and once we revise again we're going to be

17 submitting it to Phil to get his input. After Phil's
18 input, we'll be submitting that new format to the policy
19 commission for consideration. We're hoping that will
20 help us review CAPs a lot quicker. And also will help
21 the owner and operators and their consultants create
22 CAPs a lot quicker to enable everyone to get out and
23 start cleaning up these sites instead of dealing with
24 the CAP.

25 Some of the things going on, as Phil says,

21

1 we're helping with the database development. Currently
2 some of our staff is helping out SAF with the reviews up
3 there. Seeing that they've lost some people, actually
4 we've stolen them, so we've agreed to help Judy. We do
5 have one new hire that hasn't started yet and we had one
6 promotion within the section. So, hopefully, that will
7 help too.

8 Another thing that we're doing right now is for
9 all the real low priority sites that we haven't been
10 able to get to, we're using a contractor to help us get
11 back with these low priority sites to either see if
12 they're closable or get them moving towards further
13 corrective actions seeing that the SAF is going away
14 soon. They just started that, so hopefully in the next
15 few months we'll see an increase in the number of LUST
16 case closure.

17 MS. MARTINCIC: So that applies to previous

18 closure request columns on these forms? What you just
19 stated?

20 MR. DROSENDAHL: Yeah, those numbers.

21 MS. MARTINCIC: Because it's remained kind of
22 constant, these previous closure requests.

23 MR. DROSENDAHL: Right. The closure request
24 coming in is remaining kind of constant, but the
25 resulting number of LUST cases closed will shoot up.

22

1 MS. MARTINCIC: But previous means it's been
2 in-house, right?

3 MR. DROSENDAHL: Right. Let me get to that
4 one.

5 MS. MARTINCIC: And that's what you're saying
6 the agency is hiring outside process to look at previous
7 closure requests?

8 MR. DROSENDAHL: No, we're looking at the
9 closure request. The contractors are just looking at
10 all the Priority 4's and Priority 3's that have just
11 been stagnant in our files. The owner/operators haven't
12 been moving forward and we haven't been able to get back
13 to them to see where they are in the process.

14 CHAIRPERSON CLEMENT: It's not people that are
15 requesting closure?

16 MR. DROSENDAHL: No.

17 MS. MARTINCIC: That will fall under which one
18 of these forms would the number fall in because it

19 would n' t be site characterizati on ei ther, wou ld i t?

20 MR. DROSENDAHL: No, ei ther i n fi rst one.

21 MS. MARTINCIC: The ri sk assessm ent status
22 sheet?

23 MR. DROSENDAHL: The fi rst one, LUST numbers or
24 i t wi ll be -- i t wi ll probabl y be on the LUST case
25 cl osure graph. Thi s wi ll ju st -- and maybe we' ll have

23

1 to devel op another li ne for LUST case cl osure that
2 di dn' t request cl osure.

3 MS. MARTINCIC: I was ju st tryi ng to understand
4 what you' re talki ng about. I t i s hard for me to fol low
5 what acti on. I want to make sure I understand.

6 MR. MCNEELY: Can I cl arify a li ttle bi t, Joe?

7 MR. DROSENDAHL: Sure.

8 MR. MCNEELY: The forms you have i s site set
9 are reports that are submi tted. We' re looki ng -- I
10 don' t have the numbers exactl y. I love numbers and I
11 di dn' t memori ze the Pri ori ty 4 si tes -- have al ready
12 been characteri zed and eli gi ble for cl osure. But for
13 some reason haven' t been cl osed, mi ght be wai ti ng for
14 assessm ent for soi l, i n some cases have been there for
15 years; there' s over a hundred -- hundred somethi ng. No
16 reason the si tes shou ld not be cl osed and our contracto r
17 i s looki ng through and fi guri ng why aren' t these cl osed
18 and maybe one li ttle thi ng. Looki ng at i t wi th fresh
19 eyes and write another l etter, or cl ose the guy.

20 Personally close sites that are really eligible for
21 closure.

22 There's another category, Priority 3, soil.
23 Only been characterized that they either exceed the
24 clean up or do -- or least restriction on the property
25 or some type of clean up that maybe they submitted the

24

1 information and something got stalled for a long time.
2 With the Tier II software, we can take a fresh look at
3 it and close a lot of sites above the standard and maybe
4 benefiting the Tier II software.

5 MS. MARTINCIC: How many in the category?

6 MR. MCNEELY: There's a couple hundred.

7 MS. MARTINCIC: Oh, really? More so than the
8 4?

9 MR. MCNEELY: There's a couple sitting there
10 and there's ground water at the sites that are truly at
11 risk.

12 MS. MARTINCIC: Thanks for that. That helps.

13 CHAIRPERSON CLEMENT: Mr. Johnson?

14 MR. JOHNSON: I was just going to -- and on
15 what Phil was saying, the contractor started shortly
16 after the first of the year, and so far we've -- they've
17 been able to review about 50 of these sites that are
18 right now in the process and moving towards one of those
19 categories that Phil was discussing.

20 CHAIRPERSON CLEMENT: Is the contractor one of

21 the state lead contractors that you are using or going
22 out for another bid on this separate?

23 MR. MCNEELY: The contractor is one of the
24 state leads, AMEC.

25 MR. JOHNSON: It's AMEC.

25

1 MR. MCNEELY: And we're getting the money from
2 actually an EPA grant and not using the SAF grant.

3 CHAIRPERSON CLEMENT: And EPA to state closure
4 or LUST?

5 MR. MCNEELY: It's to LUST. And part of EPA is
6 pushing site closure and the grant is helping to pay
7 some of the site development too.

8 CHAIRPERSON CLEMENT: Great. Great.
9 Congratulations.

10 Joe, I had a couple questions on the risk
11 assessment status.

12 MR. DROSENDAHL: Uh-huh.

13 CHAIRPERSON CLEMENT: Reading this it looks to
14 me -- and I just want to be sure that I am reading that
15 correctly -- I'm looking at your LUST risk assessment
16 status document and says how many risk assessments were
17 approved in 2004. Basically, I read there was eight; is
18 that correct?

19 MR. DROSENDAHL: In 2004?

20 CHAIRPERSON CLEMENT: Yeah. Because you have
21 January through December.

22 MR. DROSENDAHL: Uh-huh, that's correct.

23 CHAIRPERSON CLEMENT: Okay. And then how many
24 risk assessors do you know are available to support the
25 UST specific program?

26

1 MR. DROSENDAHL: Just one.

2 CHAIRPERSON CLEMENT: And that would be
3 Jeanene?

4 MR. DROSENDAHL: That would be Jeanene.

5 CHAIRPERSON CLEMENT: And my next question is,
6 are you -- are you receiving adequate resources to deal
7 with the risk assessment process implementing the Tier
8 II software, actually conducting reviews of the risk
9 assessments?

10 MR. DROSENDAHL: I'm sure Jeanene would say,
11 no. No, but basically Jeanene is spending a lot of time
12 with the Tier II software which we're hoping will
13 definitely speed up the process of reviewing submitted
14 Tier II's. She's been involved with revision to the
15 soil rule quite a bit.

16 It's like, you know, I'm not going to say that,
17 yeah, we have totally adequate resources. That's a hard
18 thing to say. Things are on such a flux right now that
19 that's real hard to determine. Once the Tier II
20 development is over with, the soil rule is over with,
21 then that's going to free up a lot of Jeanene's time,
22 the stuff coming in will be easier to review. So, right

23 now that's a real hard to say yes or no.

24 MR. MCNEELY: I'd like to answer that too.

25 Right now Jeanene's highest priority -- and I've been

27

1 setting it to her -- is Tier II software and helping
2 with the soil rule. Once we get the Tier II software
3 done, it will be a lot easier on her to get this done.
4 And soil rule is important for the whole agency in terms
5 of we still have to have a process to process the risk
6 assessments. We do have a contractor on board. He's
7 not under the same program division, he's under another
8 division. If it comes down, we can start using them.
9 I'm not sure it's there. Once, you know, Jeanene, then
10 her time will be freed up and hopefully our staff will
11 be able to review these Tier II risk assessments.

12 CHAIRPERSON CLEMENT: Will Jeanene be the only
13 person capable of Tier II or will you have other staff
14 training to review those?

15 MR. MCNEELY: The plan is to have all the
16 project managers trained and the more complicated to go
17 to Jeanene, or have her there as a resource if there's
18 some default or things being changed. And not sure
19 about that. It's straight forward, the software is
20 straight forward input parameters. It should be easy
21 enough for everybody to do.

22 CHAIRPERSON CLEMENT: Of the open LUST risk
23 assessments right now -- and tell me if you don't know

24 this -- how many of these will be considered completed
25 and how many might be eligible to go through Tier II?

28

1 Do you have any idea what your --

2 MS. HANLEY: Jeanene, the reason why it's
3 complicated is most of them are not submitted in Tier II
4 format. Most of them are risk assessments where they've
5 been creative, and so the more creative they are the
6 more time intensive it is on my end of it. Everyone
7 once and a while, there's one or two where they filed a
8 rebecca (phonetic) approach but those are usually not
9 the majority.

10 CHAIRPERSON CLEMENT: Would you require -- I
11 know it's sort of looking backwards in a sense -- would
12 you revise or potentially require the owner and operator
13 to use the Tier II if it's existing, Tier II submitting
14 what's been submitted?

15 MS. HANLEY: If they do that, it will make my
16 life so much easier and I will get some sleep at night.
17 The program, all the information needed is required to
18 be input so the reports I'm getting I'm having gaps or
19 having to go through the file and dig it up or try to
20 find it or develop it myself. In some cases it's not
21 there to be developed on my end of it, so I have to kick
22 it back to the client and say, can you please provide me
23 with this information I need? So that basically makes
24 the process a bit longer.

1 that if someone had opened risk assessments and wanted
2 to have a more speedy process, they would want to go
3 into the Tier II software and try to apply it to their
4 existing site?

5 MS. HANLEY: I would -- I would strongly advise
6 that.

7 CHAIRPERSON CLEMENT: Okay. Thank you.

8 I think, Joe, did you have anything else?

9 MR. DROSENDAHL: No, I was done.

10 CHAIRPERSON CLEMENT: Any other questions or
11 comments for Joe?

12 CHAIRPERSON CLEMENT: Then we'll jump to Judy
13 Navarrete and provide the state insurance fund monthly
14 update.

15 MS. NAVARRETE: Hopefully everybody has the
16 chart in their packet, and as we can see we had an
17 influx of applications in December. Shot up there to
18 176, and we did our usual 63 or so even though I'm short
19 three hydrologists. And we have been interviewing and
20 looking forward to at least hiring a couple for right
21 now and we'll continue to do interviews. But, you know,
22 it takes a little while to even get through the hiring
23 process. Once you've interviewed and everything, you
24 still have to go have it approved and everything, and
25 that takes some weeks. And then the person you're

1 hiring has to give their two-week notice. So we're
2 looking at maybe February getting the first person on
3 board hopefully.

4 In the meantime, we have asked Joe for some
5 help from the people he has hired away from us, and they
6 have been helping us. But we're kind of -- we're
7 actually staying on top of everything. We're trying --
8 right now we're really working on trying to get
9 everything out that's over 90 days. Everything you see
10 over 180, those are electronic reimbursements and those
11 go back to the date of original applications, so that's
12 why they're at a 180 days. I don't have any filters on
13 our database that filters that out. In the new one we
14 will have a filter and reporting will be much better.

15 But we are working on flagging all the 90 days
16 and trying to get those out as fast as we can and not
17 have any overage. Even ones you see on 90 days also may
18 not be over 90 if they have had the AN going out,
19 Application Notification that we need more information.

20 The time tolls for that, as you know, I don't
21 have a database that tolls that time, so I have to
22 report if we go over 90 days. No matter what happened
23 on that, I have to report it because I can't go back on
24 every one of these and research. I'd have to research
25 the physical file almost. Our new database will have a

1 licensing timeframes module which will toll the time and
2 give me actual time that we spend reviewing the
3 application. So, we're really looking forward to having
4 that new database come online.

5 And as far as appeals, we did have a little
6 jump in formal. Down in informal, up in formal. We had
7 one hearing, one that went to hearing last month and it
8 was dismissed. I think it was dismissed because of
9 failure for the applicant to show.

10 CHAIRPERSON CLEMENT: I know.

11 MS. NAVARRETE: In fact, it was -- they thought
12 it had been withdrawn and evidently the paperwork hasn't
13 gone through or something. So, of course they didn't
14 show up for it.

15 CHAIRPERSON CLEMENT: Is there any bottleneck
16 now because of technical appeals panel and availability
17 of staffing for that?

18 That bottleneck should be --

19 MS. NAVARRETE: We had a status hearing last
20 Friday and the judge didn't seem to think there will be
21 any problems. We have a couple of TAP this coming month
22 of February and she didn't -- Phil Schnieder (phonetic)
23 has not gotten back with her as any scheduling problems
24 as of last Friday -- last Friday. So, as far as I know,
25 everything is going to go and we're not having any

1 problems there.

2 CHAIRPERSON CLEMENT: And I think processing
3 from the Governor's office has gone through for all the
4 new appointments on the Commission I did receive and
5 also then technical.

6 MR. MCNEELY: And I did -- I had AI mail them
7 out to everybody, so everybody should have theirs, I
8 think. Did you -- did you get it? And the TAP also
9 there was 10 members and all got there.

10 CHAIRPERSON CLEMENT: So we're fully -- with
11 Jon and Cynthia, we're fully staffed. Great. Thank
12 you.

13 Mr. O'Hara?

14 MR. O'HARA: I would like to ask Judy a couple
15 of questions on the chart on state insurance fund. And
16 I really want to emphasize what she's saying. When we
17 had the spike in claims back in August and September, it
18 was thought that that was an abnormality and would go
19 down to more reasonable levels. And you see that's not
20 occurring. If you look at this on a six-month basis,
21 she's receiving approximately twice as many applications
22 per month as she's processing. And fairly consistently
23 they're averaging about 120 a month. And pretty
24 consistent in processing about 60 a month.

25 So just to emphasize what Judy is saying, if

1 something doesn't change now or very quickly and she
2 doesn't get resources, we're going to be back in a
3 situation where a year or two ago we had a backlog and
4 the Commission spent quite a bit of time dealing with
5 backlog. I want to emphasize what she's saying, she
6 does need resources.

7 MR. MCNEELY: Can I comment on that? I'm still
8 thinking this 176 is an abnormality. I don't think
9 there's enough claims to keep coming up and certainly
10 contractors are submitting a whole lot of claims ahead
11 of time, and I think that will dry up very soon. And
12 we'll get the resources.

13 And one good thing about this is Judy's group
14 has been processing pretty much the average of what
15 they've done with five hydrologists. Now they have two,
16 we've really streamlined the process. I think when we
17 get more hydrologists we'll be able to pump that up to
18 hit a hundred and something.

19 MR. O'HARA: That may be but, Phil, I go back
20 to a comment made in your summary based on legislative
21 changes, going to be a lot of work going to be done in
22 2010 and so this trend may even increase. But, we'll
23 see.

24 CHAIRPERSON CLEMENT: Ms. Navarrete?

25 MS. NAVARRETE: I would like to make a comment

1 to the number of applications that are being submitted.
2 We've had at least -- not to name any names, but one
3 consultant for one time period, you know, five or six
4 applications, \$2,000 or \$3,000 that could have been
5 combined in one application. And that is happening and
6 happening, and that's one thing why the statute got
7 changed. I want \$10,000. The statute is \$5,000.
8 Because to process an application that costs you almost
9 as much to process as to put in, there's no reason for
10 that.

11 MR. O'HARA: When did that law take effect with
12 \$5,000?

13 MS. NAVARRETE: It will take effect July 1.

14 MR. O'HARA: With the new --

15 MS. NAVARRETE: With the new rule.

16 CHAIRPERSON CLEMENT: So we're still dealing
17 with that then?

18 MS. NAVARRETE: Uh-huh, and it's a statute, so
19 I'm still dealing with the \$1,000, the \$2,000 and the,
20 you know, anything under \$5,000 submitted for the same
21 three-month period. And you submit multiple
22 applications for it, so that in itself can just multiply
23 the number of applications. We're trying to group those
24 together and have them all reviewed at once in one
25 timeframe.

1 CHAIRPERSON CLEMENT: Judy, Ms. Navarrete, is
2 there anything that the Commission could support to help
3 you obtain the necessary resources or anything you or
4 Phil have identified that will help expedite?

5 I'm sensitive to what Mr. O'Hara is saying, I
6 think you're going to have a big lump you're going to
7 have to get through. Any suggestions or ideas that we
8 can assist you?

9 MS. NAVARRETE: Well, we are going through the
10 process. I mean, it's just a matter of we have to
11 interview the people, make sure the qualifications, and
12 with the State you have to go through the hiring process
13 and that's a drag but you have to do it.

14 CHAIRPERSON CLEMENT: Do you have any
15 contracting support? And would it be useful at all if
16 you don't?

17 MR. MCNEELY: Not for SAF.

18 CHAIRPERSON CLEMENT: Not for SAF there's no
19 contracting support, okay.

20 Is that a potential? Could you move money
21 around if you needed it to provide contracting support?

22 MR. MCNEELY: Right now we have a 21 percent
23 administrative CAP. There's really no flexibility in
24 that. And that's like what we're dealing with the
25 closure of Joe's group that's coming out of EPA money,

1 because there's really no extra money in there.

2 CHAIRPERSON CLEMENT: Any other questions or
3 comments?

4 From the SAF presentation --

5 Do you have a form and we have typically --
6 what I would like to do is hold any public comments to
7 the end. But this I think is a subject that's near and
8 dear to many people's heart. And if you don't mind,
9 we'll take a public comment right now.

10 MR. KELLY: If I have a question or comment,
11 feel out this?

12 CHAIRPERSON CLEMENT: Feel it out, Mr. Kelly.
13 If you have a question you can present it at this point.

14 MR. KELLY: I'll give this to you in just a
15 second.

16 Yes, madame chairman, thank you. I had a
17 question actually more for Joe and following up on your
18 point of risk assessments and risk assessment slide they
19 gave us. And my question is, madame chair, Joe, in risk
20 assessment for UST program or department --

21 MR. DROSENDAHL: UST department.

22 MR. KELLY: There's eight UST risk assessments
23 approved last year.

24 MR. DROSENDAHL: Uh-huh.

25 MR. KELLY: Okay. That's what I wanted to

1 reiterate.

2 CHAIRPERSON CLEMENT: Thank you, Mr. Kelly.
3 And if you wouldn't mind for the record filling out a
4 card.

5 MR. KELLY: Yes, ma'am.

6 CHAIRPERSON CLEMENT: Okay. Anything else on
7 the ADEQ presentation?

8 We'll jump now to Andrea who is going to
9 provide an overview of the financial/technical
10 subcommittee that was held last week.

11 MS. MARTINCIC: Last Wednesday we had a joint
12 committee meeting of financial and technical
13 subcommittee to review the second draft of SAF that was
14 received for the Committee near the end of December. As
15 Phil has stated, basically we've went through and
16 identified some main issues that we still have with the
17 second draft of the rule. And I tried to capture those
18 in a one-page summary that is available around the table
19 there for anybody in the audience that doesn't have it.

20 Some of the issues are similar to issues we had
21 originally with the initial draft. And I think some of
22 the issues hopefully can be addressed with maybe further
23 clarification on the part of ADEQ in the way the
24 language is stated, I guess, in the rule. Some of these
25 issues were brought up and ADEQ in the meeting was able

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1 to sort of give an explanation which seemed

2 understandable. But the concern was still there based
3 on language in the rule. So I'll go through these kind
4 of quickly and try to expand on the ones maybe that I
5 can expand on.

6 CHAIRPERSON CLEMENT: Just one quick comment.
7 The Policy Commission did submit formal comments on the
8 draft rule and we've been following this very closely.
9 And the last meeting was looking at the second draft of
10 the rule. And so I just wanted to make sure the new
11 Commission person knew that.

12 We should probably get them a copy of your
13 comments so they have that.

14 MS. MARTINCIC: So, just going through some of
15 the issues that were identified. The first two issues
16 have to deal with definition and the draft rule.
17 Basically it seems to have removed the term designated
18 representative in the definition portion of the rule but
19 it still refers to designated representative in other
20 sections of the rule. And from a regulated community
21 standpoint, we're wondering why it's taken out of the
22 definition but still referred to. So it's still all
23 right to have a designated representative I think from
24 an owner/operator standpoint especially for small to
25 mid-sized folks. It's important to be able to designate

1 someone as your representative if you're not an expert
2 on these kinds of technical issues. So that's still an

3 issue out there.

4 The other definition that was brought up as a
5 concern was service provider. And it's my understanding
6 this has to do with the way the definition occurs in the
7 draft rule. There's some concern on the part of the
8 consulting community, I believe, that this could
9 preclude them from using subcontractors in the way that
10 definition is presented in the rule. So, one suggestion
11 was that you could change "and an employee" to "or an
12 employee."

13 So we covered that during a meeting as maybe a
14 possible solution. With that, I guess what it comes
15 down to is whether ADEQ is trying to limit
16 subcontractors from doing the work. And I don't know if
17 that is the case or not.

18 The third issue we quantified is --

19 CHAIRPERSON CLEMENT: And I'll make a personal
20 comment on this because I'm a small firm. If you can't
21 use subcontractors to do UST work, it will only enable
22 only the very large firms to work in the program or else
23 require other firms to hire people they don't need on a
24 full-time basis. So. It seems to be really skewed to
25 promoting the larger firms in my opinion. Thanks.

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1 MS. MARTINCIC: The third item we identified
2 has to do with substituted work items, and it was in
3 relation to the work plans. And in the draft rule it

4 basically states that you can't resubmit, because if you
5 do it will be a basis for denial is how I understand it.
6 And one of the issues that came up was whether ADEQ
7 might be able to explain if they're trying to go back --
8 and maybe someone can inform me, because I don't know
9 the history of this, I don't know if there's been some
10 kind of substitution and whether or not it's the intent
11 of the agency to go back to the original process. And
12 maybe just clarify that a little more. I know there's
13 kind of a similar issue down on number 11, I believe.

14 But this is a big deal. And I think people in
15 the regulated community are pretty concerned about the
16 fact this will be used as a basis for denial. And so
17 we're hoping to get some more clarification on that I
18 think from ADEQ. And maybe when I'm done with all this,
19 Phil, maybe if you can, if you feel you want to explain
20 anything.

21 And then the fourth item had to do with
22 retroactivity. And at first when I looked over the
23 second draft I thought it was addressed, but the issue
24 of concern that I see still is starting on Page 3. It
25 says, "Notwithstanding the effective date." And still

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1 basically seems to allow the agency to throw out
2 pre-approval applications on work plans prior --
3 submitted prior to the rule. And I think that's still
4 retroactively applying it. So I still feel like the

5 language in there is concern for retroactivity. And at
6 the meeting I felt the others agreed that that was still
7 a main concern.

8 The fifth item has to do with the cost sealing
9 and environmental costs. As Phil stated, the agency put
10 forth some documents and examples of how they're
11 defining phasing of work tasks and environmental costs.
12 But we still don't know what the costs are. So that, I
13 mean, that's the kind of thing where it was helpful to
14 see the definition of how you are defining phases of
15 work.

16 But the real issue is what amount is going to
17 be covered? The owner/operators need to understand to
18 assess other areas of the rule. And it sounds like
19 we're not going to really be able to get that more
20 detailed information until March, which, you know, I
21 guess we don't have it, we don't have it. So -- but
22 that's still a main concern.

23 And one of the main concerns that my membership
24 has on this too is that, you know, we've been told that
25 the agency is going to go state lead providers as a

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1 basis for determining the costs that are acceptable.
2 And my concern with that is, you know, again, you may be
3 very intentionally kind of decreasing the number of
4 folks that owner/operators can go to to get work done.
5 And if your main goal is clean up and close sites, I ask

6 the agency to keep that in mind. So, the costs are
7 obviously still an issue.

8 The sixth issue that we brought up had to do
9 with the returning incomplete application and draft
10 rule. It says that, you know, ADEQ -- it made -- it
11 sounds like ADEQ could deny an application if it's
12 incomplete. And from a regulated standpoint from our
13 side we really felt progress had been made at the agency
14 and they were willing to pick up the phone and call the
15 owner/operators and consultants if something was missing
16 in the application, something minor. And the concern is
17 that the language in this draft rule kind of backslides
18 on some of that progress that we felt had been made.

19 In the meeting, ADEQ I think made it clear
20 that's not their intent. So, hopefully, that issue can
21 be resolved. I do feel -- I felt from owner/operators
22 thought that had been involved. I'd hate to see us go
23 back to a more draconian process.

24 The seventh item on here is eligibility for
25 formal appeal. And I had referenced Page 22 in the

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1 draft rule. And unfortunately I don't have a lot of
2 background on that issue. I know it was an issue that
3 we captured in the meeting, and maybe when I'm done
4 someone from the audience could speak on it. So, I
5 don't want that to lose sight.

6 I know one of our overall general concerns with

7 the draft rule is it seems to be setting up a process in
8 general it appears there will be more appeals because
9 it's a more, you know, it's not as user friendly as I
10 would have liked to think.

11 I would have thought originally with the whole
12 idea of coming out with the second draft rule changes
13 and it seems to set up a lot of unnecessary reasons to
14 have to get attorneys and fight things a lot more, which
15 is a concern. But I don't know if that is specifically
16 related to the eligibility for formal appeal.

17 So number eight had to deal with certification.
18 There was language in the rule requiring certification
19 for different reports. And I know that was an issue for
20 consultants who felt the reports may not warrant a
21 certification. In other words if the report doesn't
22 deal with anything that a certified geologist would know
23 about, they're not going to certify it. So, I don't
24 know if that's going to get resolved, but that was an
25 issue still.

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1 Number nine had to do with reimbursements. And
2 there's a lot of line items for the conditions in order
3 to approve a reimbursement. And I know there was some
4 concern with a particular section, it was on Page 8,
5 Section C, Conditions For Approving Reimbursement. And,
6 again, this may relate back to the certifications I
7 think because it required them to be certified in order

8 to approve the reimbursement I think.

9 Number 10 had to do with workplan requirements.
10 And we had made a reference to remove -- there's some
11 reference to guidance in the rule, and we just didn't
12 feel that makes sense to be referring back to guidance
13 in a rule.

14 The 11th issue, again had to do with an ADEQ
15 okay. Basically they say they're not going to approve a
16 reimbursement application against pre-approved workplan,
17 that it has to be a direct payment. And I think this
18 gets back to the substitution issue.

19 Phil, is that right?

20 MR. MCNEELY: I think so.

21 MS. MARTINCIC: And in the meeting ADEQ stated
22 they're not -- it's not intended to keep applicants from
23 submitting a reimbursement application if they have to
24 do it in a different way or different form. I'm hoping
25 ADEQ can provide some more clarification.

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1 What's lagging is that we got the draft of the
2 rule and we haven't gotten a lot of super clarification
3 from the agency. And so, you know, a lot of the rule is
4 what people's interpretations are of the language. And
5 until we can get better clarification from the agency,
6 it's difficult to know exactly what the intent is behind
7 some of these things. So bare with us as we try to make
8 our comments on these things if we don't have a clear

9 understanding on where the agency is going. On some of
10 this it's difficult to comment on.

11 And the 12th issue I think was addressed by
12 ADEQ. I know my member was concerned about requirements
13 for independent requirement. And if you were in
14 financial need, in the rule you're poor and deserve
15 financial help which sort of seemed like an oxymoron.
16 And the agency assured us in the meeting if it comes to
17 ranking, they plan on providing that service. So a
18 financially needy owner/operator doesn't have to pay for
19 an accountant.

20 MS. NAVARRETE: We are going to -- Judy
21 Navarrete -- need in-house. But the little note down
22 there is wrong. We're going to provide in the cost
23 schedule payment to reimbursement someone for getting a
24 balance sheet done.

25 CHAIRPERSON CLEMENT: Judy, does that mean they

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1 have to expend those funds and go back for reimbursement
2 basically according to the cost schedule?

3 It will still be an issue then if that's the
4 case. Is that what you're saying?

5 MR. MCNEELY: Yes.

6 MS. NAVARRETE: Yes, that it will be a
7 reimbursed cost.

8 MS. MARTINCIC: So this is still an issue
9 because I have a fundamental problem for owner/operators

10 that have financial need to go out and hire an
11 independent accountant to have proof that they have
12 financial need in order to get in line for ranking.

13 So --

14 CHAIRPERSON CLEMENT: Other than to get in line
15 for the ranking, does the financial assessment need to
16 be done for any other purpose?

17 MS. NAVARRETE: No.

18 CHAIRPERSON CLEMENT: Ms. Gaylord and McNeely,
19 let's hear.

20 MS. GAYLORD: To request a financial need
21 settlement, you would certainly have to -- you would
22 have to have the balance sheet by an independent
23 accountant.

24 MR. MCNEELY: This is completely different from
25 a financial need settlement.

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1 MS. GAYLORD: I know, but what the chairman
2 asked if this applicant is a financial need application,
3 do they need to hire independent accounting.

4 MS. MARTINCIC: It's my understanding you don't
5 have to do that now.

6 MR. MCNEELY: No, we've never forced that
7 issue. But the issue right now is we have -- we are
8 responsible for the taxpayers' money. We have fiduciary
9 responsibility and we have consultants signing, you
10 know, those type of sheets. People like me saying

11 you're financially needy I'm not qualified and not
12 saying a CPA. We're saying that you need to have a
13 third party look at it, an accountant or someone that
14 does that for a living that says, yes, you are
15 financially needy. I don't think it's an owner/operator
16 -- I don't think it's up to me to say I'm financially
17 needy and certify myself. It's nice to have a third
18 party that does that for a business.

19 MS. MARTINCIC: Some of my owner/operators are
20 actually CPA's and little frustrated that they have to
21 go out and hire an independent accountant when they are
22 certified public accountants to certify a financial
23 sheet. So this is a change from current policy, and so
24 I --

25 MR. MCNEELY: That wasn't a change. Mike, you

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1 used to do balance sheets from the tax returns when
2 there was -- did some sort --

3 MR. O'HARA: Madame chair, I used to do the
4 financial reviews for the department. In many cases
5 where the owner/operator came to us and said they don't
6 have a financial statement, it's pretty common because a
7 lot of small businesses or individual businesses don't
8 have personal financial advisors. And working for the
9 State we would go ahead and prepare that for them.

10 But I guess in terms of cost, that would come
11 out of the State.

12 CHAIRPERSON CLEMENT: So, let's just clarify.
13 So, I'm confused now. Okay, right now the State is
14 verifying this independently, there's no certification
15 or third-party review required for the owner and
16 operator. The new rule will require to demonstrate a
17 financial need, a third-party review and certification?

18 MS. NAVARRETE: Let me explain.

19 CHAIRPERSON CLEMENT: Okay, great.

20 MS. NAVARRETE: When we had ranking, people
21 would apply for financial need points so they could move
22 ahead in the ranking. The State has had a contract with
23 Mike O'Hara to provide that financial need. We would
24 send the paperwork to Mike O'Hara, he would do his from
25 the tax returns or whatever, they provided us more or

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1 less a balance sheet so he could prove financial need,
2 and we paid for that.

3 Now, it's been over, what, almost two years now
4 or over a year that we have had no ranking. I don't
5 foresee in the near future we will go back to ranking.
6 I hope we never go back to ranking. I will do my very
7 best and hopefully whoever in the future who takes my
8 place will do their best to keep this thing from having
9 to be ranked again. But, we needed to make a provision
10 in the rule in case we ever go back to ranking how we
11 would handle it.

12 So how we are going to handle it is bring the

13 financial need in-house. But we need the paperwork in
14 order to assess it in-house, and it will not be in SAF
15 it will be done in administrative by our financial
16 person who does all that stuff for waste programs. You
17 know, all the financial documents to see if you have
18 financial assurance for dumps. I don't know, what do
19 you call them, waste management and things like that.

20 So, going to be the same person. The only
21 thing he needs is this. So what we've written in the
22 rule and we intend to pay and reimburse the applicant
23 for any cost, out-of-pocket cost to do that. So that's
24 the explanation. It isn't a change because we didn't --
25 we had Mike under contract to do that. You just didn't

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1 see it.

2 MS. MARTINCIC: It didn't sound like
3 owner/operators were paying the up-front cost right away
4 and having to apply for reimbursement. In my mind,
5 that's a change. We can continue to go back and forth
6 on it, it will still be an issue for my membership and
7 regulated community.

8 In sharing with everyone what issues were
9 brought up in that joint meeting, I thought the issue
10 had been resolved. I thank you for clarifying that
11 Judy. I misunderstood your comment during that meeting.
12 So, now I know I need to include that concern in my
13 comments by the end of the month.

14 CHAIRPERSON CLEMENT: Mr. O'Hara.

15 MR. O'HARA: I think I understand the concern
16 from the Department's standpoint. When we do a
17 financial ranking we had to basically take whatever the
18 owner/operator had and it could be scratched on a piece
19 of paper what they thought was the financial position.
20 So, I in review from a financial accountant whether it
21 was not -- was prepared under general -- you're
22 comparing an apples and oranges kind of system. So, I
23 think what the Department is saying is let's standardize
24 that process and have everybody's financial statement
25 prepared under similar basis and then can be reviewed in

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1 a very objective way.

2 CHAIRPERSON CLEMENT: I certainly understand
3 why the Department would want to do that and I
4 understand why financial owner/operators would not want
5 to do that because they have to do money upfront.
6 Hopefully in a very rare occasion this is not an issue
7 for those people who tried to set up the program to
8 support this who could not pay for clean ups. This has
9 spiraled into everything in the universe.

10 I would ask the Department as you move forward
11 and closing SAF to really keep in mind what the original
12 intended purpose to support the owner and operator who
13 couldn't financially pay for our own clean ups. And as
14 you're doing everything and implementing the rule and

15 finalizing the rule, please keep that in your mind.
16 Because certainly as policy commission chairperson, I
17 will bring back to the Commission those issues. And we
18 may, you know, actually want to submit written comments
19 through the formal administrative process if those
20 issues continue to be problematic to those people who
21 can least afford to participate in the program.

22 Everybody remember what this is about, that's
23 all I ask as we move forward.

24 MS. CAMPBELL: Madame Chairman, may I ask a
25 question?

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1 CHAIRPERSON CLEMENT: Surely.

2 MS. CAMPBELL: I want to ask you, these kinds
3 of balance sheets you have to prepare for the
4 Department, was there -- very specific to UST sites --
5 was there specialized knowledge that you needed other
6 than your accounting knowledge to process?

7 MR. O'HARA: Not in relation to UST. You need
8 knowledge of balance sheets, financial knowledge.

9 MS. CAMPBELL: So, anybody who's an accountant
10 would be able to prepare that?

11 MR. O'HARA: Yes.

12 MS. CAMPBELL: I wasn't clear on that. I
13 wasn't sure whether there was more going into this type
14 of balance sheet, maybe balance sheet for some other
15 purpose.

16 MR. O'HARA: It's fairly simplistic.

17 MS. MARTINCIC: So, that's the summary of
18 issues that we discussed in the joint subcommittee
19 meeting. I don't know if Phil maybe wants to clarify on
20 some of those issues that we may still not fully
21 understand or if the public, anyone in the audience has
22 comments. So I'll just leave it at that.

23 MR. MCNEELY: We had quite a bit of discussion
24 at the last meeting on this, on all these issues. I
25 don't want to go back into it all.

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1 In terms of substituted work items and
2 electronic reimbursements we are not changing the
3 process right now. I think the interpretation, that's
4 the issue right now. Because we don't intend to make it
5 more cumbersome to get money. That's not the intention.

6 And whatever comments you guys write, we'll
7 look at it and clarify the rule. But this is in the
8 interest -- the terms of phone calls for incomplete
9 applications, we plan on continuing customer service.
10 But at the same time we -- when you get 175, you can't
11 be calling 175 applicants. That's not part of the
12 formal process. And then you lose track, they don't
13 respond, the time is ticking. If it's something very
14 easy to fix, we're willing to call. If there's other
15 issues we have to write or send it back or write
16 administrative notice letters and go on with the

17 process. If it's something you get very quickly with a
18 phone call here and phone call there, we will. Just
19 can't do it with the increase in applications.

20 So don't think we're trying to not do customer
21 service or we're trying to make things more cumbersome.
22 We're trying to make it very clear, we're not -- we
23 can't put all the informal stuff in a formal rule
24 process. But that's not going away.

25 That's all I have.

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1 CHAIRPERSON CLEMENT: As far as where we take
2 this from here, I certainly am open to discussion.

3 And the Commission regarding right now it was
4 the recommendation I believe of Ms. Martincic and Mr.
5 Gill we don't try to submit additional formal comments,
6 but we wait until we see the redraft. And then since
7 there is no informal process past the 31st, if we chose
8 as a Commission to comment on the next draft of the
9 recalls, it will have to be as part of the formal
10 process. So we're all going to need to -- once the
11 redraft of the rules comes out -- take a look at them
12 and we may want to set up another subcommittee meeting
13 just as a place holder in case we want to use that
14 subcommittee meeting to discuss the redraft.

15 MS. MARTINCIC: I just want to clarify. I
16 don't think people shouldn't comment on these second
17 draft of the rules. I think it's just the time issue

18 for the Policy Commission to do so at this point. But I
19 would highly recommend everybody in the regulated
20 community, and anybody who owns a tank to read the rule
21 and think how it's going to impact you over the next
22 period as SAF is phased out.

23 And please do comment because I think ADEQ
24 needs to understand the ramifications that this rule
25 could have on the small business community in Arizona,

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1 and it's pretty significant. I urge everybody to still
2 be engaged in the process.

3 And it's my understanding we will hopefully get
4 more detailed information in on the cost in March. And
5 I guess that's when any normal process will be in full
6 swing as well. And so hopefully at that time the
7 Commission could have more detailed information too that
8 might assist us in proceeding comments if it's necessary
9 at that time.

10 CHAIRPERSON CLEMENT: Mr. McNeely.

11 MR. MCNEELY: I'd like to clarify the cost
12 issue. We're going to have in March discussion in
13 describing. We weren't planning on having the cost.
14 First you have to describe what the cost is before you
15 assign cost to it. So, I still -- I don't think the
16 cost has really anything to do with the language of the
17 rule. The cost has everything to do with phase task
18 environmental cost, the definition. But the costs are

19 independent of the rule. So, the plan was not to get
20 the cost done in March. The plan is even if we go very
21 quickly, probably be in the June timeframe when the cost
22 will come out.

23 And, secondly, I'd like to restate because
24 these comments are great, I need more detail because we
25 will look at them. I want written. I would rather be

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1 informal rather than formal. The more detail we get,
2 the better off because we will look at them and be able
3 to revise the rule because we will review them.

4 MS. MARTINCIC: I know you have a subformal
5 stake holder meeting and the agency was moving forward
6 with the formal process. I didn't want people to think
7 they shouldn't comment.

8 MR. MCNEELY: Thank you.

9 CHAIRPERSON CLEMENT: Is there any interest --
10 I just, you know, we have a lot of new membership in the
11 Commission. I really encourage people to think about
12 what our role should be as we see the redraft of these
13 rules. We have been given some assurances based on the
14 two informal meetings we've had and submission of
15 written comments, some of these issues will be addressed
16 in a satisfactory fashion. But I think the next
17 benchmark we have as a Commission is looking at the
18 redraft and seeing if there's anything we really feel
19 strongly about and want to comment about the formal

20 process.

21 Okay. Any other comments, questions?

22 You know, any general public comments we'll
23 take them now. This is such a significant issue now.

24 If not, move on -- Mr. O'Hara.

25 MR. O'HARA: Quick explanation. Is it your

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1 point that the Commission will vote to approve the rule
2 or vote to not approve?

3 Our task as a Commission is review and approve
4 the policy of new rules as they come in the Department
5 and make recommendations to the director.

6 CHAIRPERSON CLEMENT: I think, my personal
7 opinion is it's going to be difficult to get a consensus
8 to approve an entire rule. We might be able to vote to
9 generally approve the rule or certain issues still not
10 totally satisfied with.

11 I think we want to stay formally involved with
12 this and how that takes what format, what detail we have
13 is going to be dependant on the redraft of the rule and
14 still in there in my opinion.

15 Any other comments or discussion?

16 Okay.

17 MS. MARTINCIC: There's another issue under
18 here. This was something Hal brought up about the
19 technical subcommittee for evaluating for sub-matters.

20 CHAIRPERSON CLEMENT: I was going to hold off

21 on that because Hal was not here. And we can talk about
22 that, but the issue is how to accomplish a DEUR at a
23 ground water site basically and in the UST program. And
24 so at the next meeting if we could have an explanation
25 of that or example of that, or when Hal is available, I

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1 think that will be very helpful.

2 Mr. Benny (phonetic).

3 MR. BENNY: I'm sorry. I apologize. Leon
4 Benny speaking.

5 I think Hal's intent was to get it assigned to
6 the technical subcommittee to get it discussed. So then
7 it can be brought forward in front of counsel and it's
8 on the agency to discuss whether the technical
9 subcommittee should talk about it. I think that's
10 because for everyone that's new. Hal wanted to make
11 sure any issues that go to the technical subcommittee,
12 they fully understand that issue and let everybody know
13 if that's an issue, that that's being discussed, and
14 sort of full disclosure, whatever. So I think that's
15 why we asked for that to be on there.

16 MR. O'HARA: It's more similar to what we said
17 that we kind of asked our subcommittee is first they
18 work on things the Commission really wants to and not
19 bring something to us we don't have any interest in.

20 CHAIRPERSON CLEMENT: Is there any issue
21 regarding having that item be discussed at the next

22 technical subcommittee.

23 MS. MARTINCIC: I don't have an issue.

24 CHAIRPERSON CLEMENT: Does anybody have any
25 additional discussion regarding that?

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1 Do we need -- again, this is where I need some
2 help. Do we think --

3 MS. MARTINCIC: In the past we just --

4 MS. HUDDLESTON: I do have a question. I'm not
5 certain I understand the statement. Is it that they
6 want -- the committee wants to evaluate how DEUR's apply
7 to UST ground water issues in general or want to review
8 DEUR's for a specific site as they come?

9 CHAIRPERSON CLEMENT: Not a specific site but
10 UST ground water clean up slash canal installation site
11 and how to apply DEUR's to a situation like that. In
12 general, I'm not aware of any specifics anybody is
13 talking about. So I do have two AG's or former AG's.

14 We don't have to vote to assign this as a --
15 okay. Great.

16 There's no difference.

17 MR. JOHNSON: We put that on the technical
18 subcommittee, madame chair, just so you know. Might not
19 be the next technical subcommittee, upcoming one. This
20 will be on the agenda and we'll have the agenda for the
21 technical subcommittee announced ahead of time. And,
22 again, it has -- we have to work through with Hal Gill

23 because he's the chairperson for that subcommittee.

24 CHAIRPERSON CLEMENT: Okay. Next, Jeanene is
25 now going to provide the Tier II risk assessment

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1 presentation.

2 And, Jeanene, as an overview in the beginning,
3 can you give the phase-in status and when this is also
4 going to be on the street also there?

5 MS. HANLEY: We'll have to do an about face to
6 the screen.

7 CHAIRPERSON CLEMENT: I've had a request for a
8 5-minute break. And apologize and take a 5-minute
9 break now and start with Tier II risk assessment.

10 Sorry, Jeanene.

11 (Whereupon a 6-minute recess was taken.)

12 CHAIRPERSON CLEMENT: Jeanene is on next. And
13 Jeanene, as you start this, you will tell us the status
14 of its implication.

15 MS. HANLEY: My name is Jeanene Hanley. And as
16 a benefit for the new members, in case you're not
17 familiar with how we got to this point in the UST
18 program, the original design concession of the program
19 was to have the rules rewritten and orientated towards
20 allowing risk space closure and having guidance to deal
21 with that so people could understand what the rule meant
22 by how do we approach risk space closure, and because it
23 is sometimes a bit of a difficult process to understand.

24 The third component of this is basically to
25 develop a software that will be user friendly and allow

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1 people to get through all the components that are
2 required and produce, say, a more consistent product. A
3 more consistent product so they know what to expect.
4 They can take it out in the field and use it and do
5 screening level work so they can have an understanding
6 of how they can modify some of the strict SRL and strict
7 Tier I numbers, the clean-up numbers, and produce a
8 report that would look all the same. Everybody would be
9 giving us reports that has everything -- every component
10 we need to look at in the same order. That this will
11 cut down on having to be digging through files to find
12 out. It will be all in one place.

13 So with that, the development of the software
14 will be strictly in line with the way the rules were set
15 up and a guidance document was written. And the
16 contractor has gotten us a new portion of the beta
17 version. The alpha version is kind of rough, the first
18 cut. And then we cleaned it up some, and this is the
19 beta version that we will begin testing as of next
20 Tuesday, that we will be getting feedback from that beta
21 test. And depending upon that feedback, if everything
22 goes well and expect the minimum amount of difficulties
23 and revisions, we hope to get it out in mid-March. I
24 believe in mid-March is what we're shooting for.

1 version is the external review version; is that correct?

2 MS. HANLEY: It's, well, not entirely external.
3 What it is, is it's a beta group assembled of a cross
4 section of people from different places.

5 CHAIRPERSON CLEMENT: So both internal and
6 external review?

7 MS. HANLEY: Yes.

8 CHAIRPERSON CLEMENT: But it includes external
9 review?

10 MS. HANLEY: Yes.

11 CHAIRPERSON CLEMENT: And has a 30-day period
12 of review and use of beta version; is that correct?

13 MS. HANLEY: Originally we had 30 days to set
14 up. Because -- because of the schedule, there was a
15 request to cut it down to two weeks' review time. So
16 the comments that we're going to be working with within
17 the two-week period from February 1st to February 15th
18 will be what we start launching our revisions for.

19 We're at any point open to any comments that
20 people have; however, the comments they may have on the
21 beta version may already be cared for if they wait much
22 longer to provide comments.

23 CHAIRPERSON CLEMENT: Is it possible for an
24 owner and operator to use the beta version now in a
25 submittal to the agency if they've got a risk assessment

1 or do they have to wait?

2 MS. HANLEY: I would strongly recommend not
3 doing that. For two reasons: The beta version doesn't
4 have a final user manual. So in other words, I'm
5 upstairs writing it as we speak. So I really need to
6 get that out, so in order to effectively use the
7 software and minimize the amount of errors and
8 difficulty, we really need a guide to do that with it.

9 Having a beta version that may have some bugs
10 with it -- because at this point we've had a minimum
11 number of eyes looking at it and we are humans prone to
12 error, so I want to catch all those errors. So using a
13 beta version would not be the best idea.

14 CHAIRPERSON CLEMENT: Okay.

15 MS. HANLEY: So the software is the reason why
16 we decided to develop it rather than use what is already
17 out there, what is already out there does not
18 necessarily give us all the components we need in a
19 report, and doesn't focus the use of modeling and
20 information the way we have it set up in the rule to do
21 streamlined Tier II.

22 Much Tier II software out there does wide
23 scoping Tier II work. And we don't want everything
24 across the board. Tier II needs to be fast and concise,
25 and we've set a prescriptive method to doing that so we

1 get a faster turn-over rate.

2 CHAIRPERSON CLEMENT: Does ADEQ own the
3 software?

4 MS. HANLEY: Yes.

5 CHAIRPERSON CLEMENT: So even though you have
6 it -- looks like you've used the Johnson Edinger model
7 -- you manipulated that. So, basically this is a
8 distinct ADEQ version and distinct owner by ADEQ?

9 MS. HANLEY: That's correct. And actually what
10 we've done with our software nobody else has done to
11 date, is that we have strapped in other software
12 packages to integrate it into -- what they built is they
13 built in the Johnson Edinger model into our software and
14 program it so you can run all chemicals on your site as
15 one fell swoop of the button. You don't have to keep
16 working the Johnson Edinger model to do it.

17 The other thing we've done is attached a
18 statistical package which is quite thorough and does
19 high-level statistics. No other software program has
20 ever done that before. And in negotiating with EPA,
21 they were extremely helpful in helping them -- helping
22 us to utilize it by adjusting their program output so we
23 can capture some of the data and use it correctly and
24 dump it into our programming. So, if they had not been
25 helpful with that, it would have been much more an

1 expensive endeavor.

2 CHAIRPERSON CLEMENT: Thank you.

3 MS. HANLEY: Last and not least, the leaching
4 model we used here is the old standby we've been using
5 since 1996. Not to say that is the best leaching model,
6 but we decided, well, in lieu of consensus of adopting a
7 more -- a different model so to speak, we'll go with
8 what we've got. At some point when we do start
9 grappling with better modeling for leaching and more
10 Arizona specific use of that, it might be worth it to
11 replace the software. But for the two-year interim
12 period where we need to crash down and consolidate the
13 amount of sites we analyze by Tier II, this will serve
14 as functional.

15 So Tier II is a second level up from Tier I.
16 Tier I means you clean it up to the soil number, so what
17 this software does is it helps you determine what you
18 have to do in Tier II.

19 You've got a control panel that says you've got
20 these steps here to do, okay. These steps are very in
21 sequence as far as what you would do if you had a site
22 and if you were writing a report. You enter your date,
23 your type of information. That's just generic, the
24 information hit here -- entered here helps you keep
25 identification of your site name on all pages printed on

1 the report. It also is the place where you link in the
2 other programs that we've hooked into this software.

3 When -- obviously when you go through here, you
4 apply your information and it grinds through the
5 application in places that you don't see behind the
6 scenes. Because I don't have time to load data and work
7 through all of it for you, it's preloaded. I'll skip
8 through it quickly.

9 You're required to enter your site and
10 analytical data. We've got it set up in format so that
11 you're required to enter your data and give us all the
12 bare minimum necessity that we have.

13 This warns you there's six pages of different
14 type of data, so don't mix and match your data. This
15 helps us and the user to present a concise data summary
16 table. So this way we avoid problems.

17 I think I need a hammer.

18 So, this is just the bare information of what
19 you need to load into it. And these are technical
20 requirements that help us get through the process. If
21 we need to do any trouble shooting.

22 CHAIRPERSON CLEMENT: One of the big issues
23 that have been outstanding was the level of validation
24 necessary for the UST data to be incorporated in the
25 Tier II software. Where is that right now?

1 MS. HANLEY: Before you attempt a Tier II
2 analysis, the site needs be characterized. And you
3 should not have gotten through site characterization if
4 you had really faulty data. So the data validation of
5 bare essential information should have been at least
6 cleaned up to some extent.

7 If they've picked up additional data and
8 they're using the Tier II report that's beyond the site
9 characterization, then that analytical data will be
10 attached as an appendix so if we see or perceive any
11 problems, we can review that.

12 CHAIRPERSON CLEMENT: I understand the site has
13 to be fully characterized, you can't do a risk
14 assessment unless it has been fully characterized. What
15 about the actual data and reviewable and QVC requirement
16 for data review? Do you have a minimum standard that
17 has to be met before you put the data in here or
18 incorporated in the user itself?

19 MS. HANLEY: The software cannot do AQQAC for
20 the user. The bare minimum data quality will get you
21 started, however, if there's any abnormalities occurring
22 with your data, some of the abnormalities will show up
23 here and trigger basically a follow-up. Basically a
24 reporting limit is required to be put there as well as
25 analytical method. It will know some analyticals are

1 prone to interference and if you have a limit you know
2 the problem is going on.

3 If you end up using data and not going to meet,
4 you're reporting level exceeds the SRL, you know you've
5 got a problem with entering the Tier II risk assessment.
6 Those types of common sense thinking through things are
7 going to be provided in the guide that goes with the
8 software.

9 Rather than take you through all the sheets,
10 you can look at the tapes. It basically breaks out all
11 the different groups of chemicals. There's three
12 metals, nonvolatile which include our PH's, and such
13 items. There's specific reasons because the sheets feed
14 into the program accordingly.

15 Then the next level, once you get the data in
16 it's at that particular point to do the test of how do
17 my site levels compare to my Tier I levels. What you
18 see here is the levels of chemicals that this computer
19 software supports. And they have been specifically, you
20 know, geared into petroleum release sites. You see the
21 volitals at the top, PHs in the metal. There's
22 incorrect numbers in there which need to be cleaned up.
23 We keep making corrections every day and the antimony
24 and those metals, although not frequently used, they
25 come in handy when we are working with used oils waste

1 products.

2 So the capacity of this software will handle
3 pretty much all the petroleum types in the future.
4 Hopefully we can expand for other chemicals so it can be
5 used for other sites as well.

6 So, basically, what this does is the computer
7 program software, you come in here, you set after -- you
8 load your data and say okay, it's time to import all the
9 data put in, and software selection maximum
10 concentration, and compared to residential or
11 nonresidential SRL. And nonresidential it compares to
12 AWQS so when you perform -- and please work.

13 Okay. So what it does is does all that
14 comparison of all that data for you. And is just a
15 warning to say here's all the things that you need to be
16 putting on the back burner while you go through the Tier
17 II process, so keep this up front and center, and I
18 won't bore you with that technical detail.

19 But here it is. The big test spreadsheet. And
20 what it does is tell you if you pass or fail. Anything
21 that doesn't pass shows up in red. For instance, that
22 particular little chemical, it says you fail.

23 So the whole purpose of this is it does your
24 thinking for you and tells you, okay, every chemical
25 that showed up on your site I don't need to take into

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1 Tier II. And I'm going to pick which chemicals you take

2 into Tier II, so that way you dump all the extra work
3 you don't need to do and it identifies the analysis that
4 you will be going through.

5 So this button here will tell you to start the
6 Tier II process, which is what this entire program the
7 bulk is of. This is the major control panel. It's got
8 three separate areas in here. This is basically the
9 input steps.

10 This is the place -- and I don't have time to
11 go through all of them for you, if you'd like more
12 information, I can do this, it develops the key and
13 initial components of creating the essential site model
14 and tells the software what receptors do I have at the
15 site that's being exposed and how they are interacting
16 with that site, is it agricultural issues, construction,
17 etc.

18 And then it tells you -- then it makes you put
19 in information and it uses this PUCL specific call
20 output for this program or zero. So you don't use the
21 maximum concentration anymore, what you're doing is
22 taking all the data from that contamination area and
23 making statistical representative concentration now and
24 software that LCU has done is built in backup to have
25 human inspection if there's a problem with the data. So

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1 the user guide I write with this is not going to be --
2 get into heavy statistics because that's already been

3 done by EPA.

4 After you then -- here's where you get into
5 modifying some of the parameters for modeling, because
6 all the modeling to date so far has been using default
7 and generic stuff that's extremely conservative. The
8 design for this is what it does is show you the entire
9 list, here's the parameters that you can change at your
10 site. And when you do that it triggers a justification
11 plan.

12 So this provides all essentially important
13 information needed for the review, it doesn't get to put
14 in value and change it at random, you have to have
15 supporting application. So that captures that function.

16 And this screen allows you to put in all your
17 data, either explanation which is short and brief or to
18 cite which appendix it appears in.

19 This panel over here is where all the modeling
20 goes into. And so this is where you access the leaching
21 model. This is where you access the Johnson Edinger
22 model. And this is where it calculates automatically
23 your direct contact with soil and ground water, whether
24 you eat it, touch it, that type of thing.

25 And last --

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1 CHAIRPERSON CLEMENT: Just a quick question.
2 Is there ever a situation in Arizona where ground water
3 indigestion is not a pathway?

4 MS. HANLEY: Is there ever a situation where it
5 is not a pathway?

6 Even though ground water -- it depends on what
7 the chemical is. If you have ground water which is not
8 being used for a source, you don't have an immediate one
9 currently, that does not mean it will not be a potential
10 one in the future. You do have to care for potential
11 future issues.

12 CHAIRPERSON CLEMENT: And there's no exclusion
13 that you're aware of for any situation because of the --
14 basically for places in Arizona?

15 MS. HANLEY: There are exclusions and that
16 would come under the panel where you explain in here the
17 institutional or engineering control which is applicable
18 to the site. It does not necessarily mean a DEUR, it
19 means it probably is a legally binding administrative
20 tool. And that's probably part of how Hal Gill will be
21 speaking about in the technical subcommittee. Because
22 those items are out there, they take various forms.

23 But in my case just to -- just to show you a
24 very simple aspect, conceptual site model is basically
25 linked so you can tell us what you want it to do. So

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1 you bold up all pathways that are complete and shows
2 which analysis are going to end up looking at your
3 chemicals.

4 So this was already preloaded, but you can see

5 if you don't have a particular source that's
6 contemplated, that certain next items will not
7 necessarily be applicable to your analysis. And so
8 therefore, the bolded pathway will disappear. So if
9 someone goes in and tries to incorrectly do things, the
10 bolded pathway will basically point them in the correct
11 direction so to speak.

12 The other feature here is that when you want to
13 apply an institutional or engineering control, what this
14 will do is allow you to not go through those
15 calculations in the software and also trigger you
16 elsewhere in the software to provide the justification
17 of how that control will prevent exposures or reduce
18 exposures that you are claiming.

19 So the software is set up down here to tap
20 through in the old Excel format type. The reason why
21 it's not more of a browser type situation is we wanted
22 to make it an earlier version of Excel you can put on a
23 laptop and take out in the field with you so more people
24 can use it. So you get more functions and more fun
25 stuff in web-type features. If you have bigger systems

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1 and more recent systems, but not everybody has that. So
2 we tried to gear it down to what the midline
3 availability was for versions of software.

4 So otherwise, you end up at the very end we
5 have a summary page that points out the result of all

6 our calculations. And here's -- and at the end you
7 generate your report and you can see in there if at any
8 time you want to see what the calculations were that the
9 software did, you can go through all these spreadsheets
10 and look at these printouts and go back to your data and
11 print all this stuff out.

12 But otherwise you can select all or print out
13 select certain features if you want to view it. But
14 everything in here contains all the necessary and
15 required information in order to make a complete result
16 for a record.

17 So, as you can see, we've got land uses, we
18 have to know how the land is being used. If you've
19 cited something, there's a reason why the site is some
20 way, there's your references, it tells you okay.
21 There's a part in there I flunked my Tier II, so here
22 are the corrective actions I'm looking at. There's an
23 attachment for that cost comparison summary, it's our
24 cold form that's currently in use for CAPs, that's
25 included. And all the output for all the other medium

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1 for statistics for leaching, for air breathing inside
2 from different sources of soil and water. And then all
3 your other essential components for basically the Tier
4 II risk calculations.

5 So this basically allows us to have a complete
6 report and allows the user to have a reminder of what

7 information you need to have and submit in order to make
8 a valid report.

9 So, as I said, this is going -- this is
10 undergoing beta testing. It is not bug free and I'm
11 running it on a laptop which has a little bit of
12 limited -- this particular one is an old version. To
13 tell you, the truth is, this will be typical if someone
14 is working with an older version laptop, running the
15 software and what they would do. The whole purpose is
16 when you're collecting field data, real time field data
17 and start entering some of the data and how will this
18 affect the site if I knew this, that's what the original
19 intention is for screening and getting to know your
20 site.

21 So if there's any questions I would be happy to
22 answer them.

23 CHAIRPERSON CLEMENT: So mid-March is when you
24 believe the final version will be available to the
25 regulated community?

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1 MS. HANLEY: At the soonest possible time.
2 That's minimized error trouble.

3 CHAIRPERSON CLEMENT: And then what's the
4 process, there's no payment for the regulated community?

5 One of the things we discussed at the last
6 meeting and with respect that there was some national
7 and international interest on the software package and

8 the potential for licensing or selling to out of state
9 or to other entities. Have you thought about that at
10 all or going in that direction?

11 Mainly where I'm coming from, this was paid for
12 by Arizona tax dollars. And if there is some market,
13 you know, revenue generation potential, I would be
14 curious if you're looking at that at all.

15 MS. HANLEY: Actually, we had not thought about
16 that. That's something I haven't thought of. I guess
17 we would have to get procurement on board to see how the
18 contract and legal issues might be, or liability. I
19 don't know.

20 CHAIRPERSON CLEMENT: I just think it's a
21 worthwhile question to ask your folks that if there is a
22 cost benefit there at all.

23 MS. HANLEY: I know the reception I got from
24 the scientific community at the conference that I
25 presented in December, basically risk assessors, they

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1 were impressed that I did all these things. And they
2 said they would like to start using it whenever it comes
3 out. So, you know, there is interest out there.

4 CHAIRPERSON CLEMENT: It would probably be a
5 lot different between the Arizona use and out-of-state
6 use, but it's something to look into.

7 MS. HANLEY: One of the things they've done on
8 the beta version of software is they put a kill date in

9 so people can't walk around with the errors of that
10 software and promulgate them onto the hard drives and
11 things.

12 Well, thanks.

13 CHAIRPERSON CLEMENT: That's a good idea.

14 Thank for you your time.

15 Any other questions for Jeanene? We've got her
16 now.

17 Mr. Findley.

18 MR. FINDLEY: I guess my question would be are
19 there differences in state programs that would preclude
20 somebody from another state using this software?

21 MS. HANLEY: One major feature is that the Tier
22 I numbers that we have, what you have to do with the
23 Tier I test and either pass or flunk, those numbers are
24 different for other states. So we -- other states would
25 not be able to use the program in the upfront portion of

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1 it simply because they would have to go in and reprogram
2 those numbers.

3 MR. FINDLEY: Okay.

4 MS. HANLEY: One of the features we designed
5 into the contract is I would be giving administrative
6 rights to go in and actually change some of the data
7 that's in there as needed, because every time we get new
8 tax data or change SRL I'm going to need to go in there
9 and change that. So that way we can keep the software

10 up to date.

11 CHAIRPERSON CLEMENT: Will it be available on
12 the website or how will people actually acquire the
13 software?

14 MS. HANLEY: For those people that don't have
15 web access we provide it on CD. Otherwise, there's
16 going to be a website link for it.

17 CHAIRPERSON CLEMENT: Okay. Thank you. It's
18 amazingly comprehensive.

19 MS. HANLEY: Yeah.

20 CHAIRPERSON CLEMENT: Probably extended the
21 time period for its development. But for the UST
22 programs in general it's very comprehensive.

23 Are you planning on perhaps using it in other
24 programs eventually if you expand the listable lites and
25 coverage?

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1 MR. MCNEELY: That IPT and TC and PC solvents
2 for --

3 MS. HANLEY: Yeah, that's the next feature
4 revision date.

5 MR. MCNEELY: We can add that because it's, you
6 know, first so Jeanene, UST -- UST we got hammered. It
7 will be nice to fix that to match the soil rule exactly.

8 CHAIRPERSON CLEMENT: That will be very
9 helpful.

10 Any other comments? Questions?

11 Okay. Let's jump -- let's close this off.

12 Thank you very much. Appreciate that.

13 Summary of meeting action items. Okay, number
14 one item is get the Attorney General's Office here for
15 the next meeting and provide us an understanding of what
16 our roles and responsibilities as Commission members
17 are.

18 If you had not attended, there's required
19 training for the Commission and other folks that work at
20 the governor's request. If you haven't attended that,
21 please contact Al Johnson and he'll try to determine
22 when that next training is going to be. And I believe
23 that's a requirement.

24 Let's see, we're going to discuss the PC goals
25 at the next meeting. We're going to get a copy of the

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1 comments that we submitted to the new PC members.

2 When I say, we, that usually means Al Johnson
3 unless otherwise noted.

4 MS. MARTINCIC: I forgot to mention, if there's
5 a way for the Commission to get a copy of the rule
6 before it goes to the Secretary of State Office so we
7 can plan our next joint meeting or whatever to know when
8 we should hold one. If that's possible.

9 MR. MCNEELY: I'll look. I don't know if it is
10 or not.

11 MS. MARTINCIC: Just so we know when to

12 schedule the next joint meeting.

13 CHAIRPERSON CLEMENT: Let's see, what other
14 action items?

15 Anyone else capture -- Al did you capture
16 anything else?

17 MR. JOHNSON: No, we really didn't have a lot.

18 CHAIRPERSON CLEMENT: Any other point of
19 discussion?

20 Okay, next agenda we are going to add the
21 Policy Commission goals for 2005. Hopefully the
22 Attorney General's Office presentation and normal and
23 routine presentation by ADEQ.

24 Any other agenda items that come up or come to
25 your mind right now?

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1 Okay, then we'll have a general call to the
2 public.

3 Mr. Kelly? Mr. Dan Kelly?

4 MR. KELLY: There's my speaker slip and that's
5 the piece of legislation I would like the Commission to
6 take a look at and recommendation on at the next
7 meeting. This is Senate Bill 1190. I gave a copy of
8 this to Phil for them to track down. They have it on
9 their radar screen.

10 It would have a significant impact on the work
11 we do at cleaning on UST. The intent of the legislation
12 is great, but the wording will shoot it down. And need

13 to hear it from more than one source. If you're looking
14 at sponsors, there's Senator Flake (phonetic) and Marsha
15 Beenby (phonetic), and Barbara Mundell who will probably
16 be able to move it through the legislature if they don't
17 come up in one form.

18 CHAIRPERSON CLEMENT: Do you know -- this is
19 Senate Bill 1190, it's dealing with exception of small
20 wells and ground water withdrawals and new language is:
21 On or after January 1st, 2006, an exempt well otherwise
22 allowed by this section may not be drilled on land if
23 any part of land is within 100 feet of operating water
24 distribution system of municipal provider with an
25 assured water supply designation within an active

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1 management area.

2 And then it goes on.

3 MR. KELLY: And what it means is, well, the
4 problem we have is within 100 feet of distribution
5 system means the pipeline of the system and almost all
6 UST sites border a water distribution line.

7 CHAIRPERSON CLEMENT: This would affect every
8 monitor well installation in the valley for sure because
9 you try to do those in public right of ways because it's
10 easier to get access through the municipality.

11 MR. MCNEELY: And ADEQ is aware of that bill
12 and watching it and talking. So we'll be on top of
13 that. If the intention is don't start pumping out

14 unless 35 gallons over, than they need to put things in
15 there for investigation or remediation, something like
16 that.

17 MR. KELLY: And specifically for the MPE wells
18 don't let that get through there.

19 CHAIRPERSON CLEMENT: Mr. Kelly, thank you for
20 calling that to our attention.

21 Any other public comments?

22 Okay, the next meeting will be February 23rd,
23 2005 at 9:00 a.m. in this room. I will be on time.

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1 And with that note, we'll adjourn today's
2 meeting. Thank you very much.

3 (Whereupon the proceeding concludes at 11:15
4 a.m.)

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8 C E R T I F I C A T E

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10 I, Angela Furniss Miller, Certified Court
11 Reporter, do hereby certify that the foregoing pages
12 numbered 1 through 82, inclusive, constitute a full and
13 accurate printed record of my stenographic notes taken
14 at said time and place, all done to the best of my skill

15 and ability.

16 DATED, at Phoenix, this 7th day of February,

17 2005.

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Angela Furniss Miller, RPR
Certified Court Reporter (AZ50127)

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