

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
April 27, 2005  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

REPORTED BY:  
Deborah J. Worsley Girard  
Certified Court Reporter  
Certificate No. 50477

WORSLEY REPORTING, INC.  
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P.O. Box 47666  
Phoenix, AZ 85068-7666  
(602) 258-2310  
Fax: (602) 789-7886

(Original)

1 COMMITTEE MEMBERS PRESENT:

2 Gail Clement, Chairperson

3 Hal Gill, Vice Chairman

4 Jon Findley

5 Karen Gaylord

6 Theresa Foster

7 Andrea Martincic

8 Michael O'Hara

9 Philip McNeely

10 Cynthia Campbell

11 Tamara Huddleston

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## 1 P R O C E E D I N G S

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3 CHAIRPERSON CLEMENT: Good morning. This the  
4 April 27th, 2005 UST Policy Commission. Welcome.

5 I would like a roll call. We will start with  
6 Cynthia.

7 MS. CAMPBELL: Cynthia Campbell.

8 MR MC NEELY: Phil McNeely.

9 MR. O'HARA: Mike O'Hara.

10 CHAIRPERSON CLEMENT: Gail Clement.

11 MR. GILL: Hal Gill.

12 MS. MARTINCIC: Andrea Martincic.

13 MS. GAYLORD: Karen Gaylord.

14 MS. FOSTER: Theresa Foster.

15 MR. FINDLEY: John Findley.

16 CHAIRPERSON CLEMENT: Thank you. The second  
17 agenda item is approval of the minutes from the February  
18 2005 meeting.

19 Did everybody receive their minutes? Has  
20 everybody had an opportunity to review them?

21 Yes, Ms. Gaylord?

22 MS. GAYLORD: I believe those were the minutes  
23 where there was an error in the attendance.

24 CHAIRPERSON CLEMENT: Oh, good.

25 MS. GAYLORD: It said that Cynthia Campbell was

1 here, and she wasn't. I may have the wrong minutes. One  
2 of the sets of minutes I got --

3 MS. CAMPBELL: I'm showing absent.

4 MS. GAYLORD: Yeah, it's showing absent. This is  
5 not the set.

6 CHAIRPERSON CLEMENT: So we are okay with that?

7 Then is there a motion? Does anybody need any  
8 discussion or had an opportunity to look at these?

9 MR. O'HARA: I move that we approve the minutes  
10 from the February meeting.

11 MR. GILL: I will second.

12 CHAIRPERSON CLEMENT: All in favor?

13 (Chorus of ayes.)

14 CHAIRPERSON CLEMENT: All opposed?

15 (No response.)

16 CHAIRPERSON CLEMENT: The minutes passed.

17 We did at the last minute have a request to the  
18 AG's office for a conflict of interest presentation. I  
19 notice that Tamara's not here, and I don't believe anyone  
20 else from the AG's office is here, so I would defer this  
21 until later in the agenda or to our next meeting if they  
22 do not arrive.

23 Okay. The next agenda item is the discussion of  
24 legislation affecting the UST program. And, Mr. McNeely?

25 MR. MC NEELY: Phil McNeely from the ADEQ.

1           There is very little legislation affecting the  
2 UST program. The sunset bill went through. It's in the  
3 Senate right now for third reading. It's four years. So  
4 we requested 10 years. The Senate passed the 10 years in  
5 the House, and they voted to abolish us, then they voted  
6 for a two-year, and now it's up to four years. So I think  
7 that's probably going to go through and we will probably  
8 have a four-year sunset.

9           The problem with the four-year sunset, just to  
10 let you know what that means, we will have a sunset audit  
11 probably starting in two and a half years or three years  
12 from now, and that takes a lot of staff time. It takes a  
13 lot of my time. It's just -- you know, you have people in  
14 your office asking questions, asking for data, so it's not  
15 efficient, but that's the legislature's call for a  
16 four-year sunset.

17           What else. The budget. The budget still hasn't  
18 been decided, but there is now the draft budget and the  
19 one that was presented to the Governor's office, which was  
20 vetoed, had no sweeps of the UST fund. The UST fund is  
21 pretty much intact, so really there is really no impact on  
22 the UST funds at all. In general, it's not a very good  
23 budget. It was not -- general funding doesn't need it,  
24 and a lot of things requested were not in there, but in  
25 terms of the UST program, it's of little to no impact at

1 all.

2 CHAIRPERSON CLEMENT: Okay.

3 MR. MC NEELY: That's it for legislation.

4 CHAIRPERSON CLEMENT: Just one question. On  
5 Senate Bill 1190, which would be the bill regarding exempt  
6 wells, is that passed or changed, do you know?

7 MR. MC NEELY: I've lost track of it. It's still  
8 alive. I think it probably will go through, will get  
9 signed into law. There was an exemption put in there for  
10 remediation wells. If you install a remediation well  
11 within an AMA, as long as it's for EPA or the DEQ program,  
12 it's exempt from the statute, and also if a geologist  
13 stamps it or an engineer stamps it for remediation, it's  
14 exempt.

15 And the reason we didn't want to put it in for  
16 EPA or ADEQ, property owners may want to do their own  
17 cleanup. They may want to do their own -- not in any  
18 program. And VRP, if they want to come in here after the  
19 fact and get it, so we didn't want to prevent any  
20 owner/operator or responsible party or property owner to  
21 do clean up, so that went through.

22 Monitoring wells are not in there because he says  
23 they've been accepted, there is no use for the water, it's  
24 not part of that statute, so we should be okay.

25 CHAIRPERSON CLEMENT: But you do think the bill

1 will be passed.

2           MR. MC NEELY: Yes, I do. It has support from  
3 all the water providers and the legislature.

4           CHAIRPERSON CLEMENT: Okay. Thank you.

5           Hal Gill had the next agenda item, bulletins and  
6 policies put on ADEQ's bulletin board in 2004.

7           MR. GILL: Thank you, Gail. I was putting  
8 together for the annual report the activities of the  
9 Technical Subcommittee had completed, and it dawned on me  
10 that we basically did literally hundreds of hours of  
11 discussion on groundwater study issues. There was about  
12 15 issues that came out of a groundwater study that we  
13 spent a long time discussing, and we came up with  
14 consensus language.

15           We also worked on three issues from the UST  
16 working group, the director who put it together, and there  
17 was monitoring natural attenuation, and MDVE issues, and  
18 intrusion of inhalation issues that we discussed and came  
19 up with either consistent language or we put it forward to  
20 more discussion.

21           And then we also had some existing technical  
22 issues, but our main thing is that we literally spent  
23 hundreds of hours this last year discussing a wide array  
24 of issues, came up with a lot of consistent language, but  
25 I don't know if any of it ever ended up on the bulletin.

1           And my question to DEQ was, where it is, because  
2 now I'd have to go back and spend I don't know how many  
3 hours again trying to find the consensus language that we  
4 came up with to see if -- to compare it with anything  
5 that's been done, and I don't know where any of that went.

6           And so it basically brings back the issue of what  
7 are we doing with the issues that we discussed, where do  
8 they end up. The idea of the bulletin was that the  
9 policies, or whatever they end up being, are posted on the  
10 bulletin. Ultimately they're to be changed in the  
11 guidance document, and the intent was to get this  
12 information out to the regulated public so they can make  
13 changes in how they're doing things so there is no  
14 appeals, and I just don't know -- I don't know what's  
15 happening.

16           So my question that I sent out last week to DEQ  
17 was where is this consensus language and how do we get it  
18 posted.

19           CHAIRPERSON CLEMENT: Mr. Drosendahl?

20           MR. DROSENDAHL: Joe Drosendahl, Section Manager  
21 for Corrective Action.

22           Yes. There is two packets of information that  
23 we've sent out to our Policy Review Committee, and so  
24 that's where the status of those are right now. I think  
25 there was one -- various issues, and then there was

1 something on monitoring natural attenuation, so that's  
2 where they are right now. I guess we could put them on  
3 the bulletin as drafts and then put them up, you know. If  
4 they don't change, we can, you know, make them permanent.

5 CHAIRPERSON CLEMENT: The process I know you have  
6 to go through -- excuse me for a minute. Just for the  
7 record, Tamara Huddleston has joined us, and we will jump  
8 to that agenda item in a minute.

9 Phil -- Mr. McNeely, I know you have an internal  
10 process where it has to be reviewed by your committee and  
11 then approved by the director. Is there a length of time  
12 that that typically takes?

13 MR. MC NEELY: The internal processes for  
14 policies, so the two that Joe was talking about, we have  
15 monitoring attenuation policies and then a release  
16 reporting policy. That can happen pretty quickly once you  
17 put it in the right format. Right now I'm actually  
18 sitting on those two, so that can happen pretty quickly.

19 But the other issue I'm not sure about, you said  
20 the hundred hours and all the consensus language, I  
21 haven't really seen that. I've been in this job now eight  
22 months. I haven't really talked to Joe about that, so  
23 maybe we can dig through that. I wasn't really talking to  
24 Hal about this. I thought you were talking about other  
25 stuff, so I'm not really prepared to say what that

1 language is. Is it a policy or guidance? I'm not sure  
2 what the status of that is.

3 MR. GILL: Well, we basically had a three-hour  
4 meeting every month of last year, and the first several  
5 months were in response to the issues that were raised by  
6 the groundwater study. And a lot of people in this room  
7 were in those meetings, and we came up with consensus  
8 language on a number of different issues. There were 10  
9 to 12 to 15 issues that, of course, fostered other issues.

10 MS. MARTINCIC: In 2004, it seems that was a  
11 recurring topic item.

12 MR. GILL: Yeah. So there is a lot of consensus  
13 language out there and my -- and if -- I mean, it seems  
14 like an awful waste of time, but nothing is ever published  
15 and we never see any language come out, and so basically  
16 the idea that the regulated public still is bumbling along  
17 doing whatever they are doing, and there was some of that  
18 language that would have definitely been a better way to  
19 do things as far as monitoring groundwater and that kind  
20 of stuff, it would be really important to get that on.

21 So, if it is appropriate and DEQ believes that it  
22 is okay to put that as draft on the bulletin until it goes  
23 through the process, because it is consensus language as  
24 far as the technical issues, we didn't get into writing as  
25 far as policy language and that kind of stuff, but I'd

1 like you to look at that if that could be done.

2 CHAIRPERSON CLEMENT: Mr. Drosendahl.

3 MR. DROSENDAHL: Judy just gave me a list of the  
4 bulletins that are up there now, and I think everything  
5 that we've been talking about is there. There is a  
6 Bulletin No. 04-11, Final UST Policy Commission  
7 Groundwater Study Guidance Language.

8 And then the Monitored Natural Attenuation is  
9 there with a note that it is a draft pending approval by  
10 the ADEQ Policy Review Committee. And then there is the  
11 Water Level and Groundwater Sampling Guidance on there,  
12 too.

13 CHAIRMAN CLEMENT: Maybe we need to do a  
14 communication to get that out. Maybe it was posted and no  
15 one knew, because, frankly, I'm not all that familiar.

16 Is it obvious when you get onto your web page how  
17 to access those bulletins or not? I mean, I don't know.

18 MS. NAVARRETE: I've got to admit our web site is  
19 not the easiest in the world, but these things went on in  
20 a timely manner. One was in -- the Monitor Natural  
21 Attenuation was in August of last year. The groundwater  
22 study language was in November, and you have to go to --

23 MS. MARTINCIC: Could you guys put a live link,  
24 when you to go Tank Division, or something, and make it a  
25 live link that says Bulletin Board, and all you've got to

1 do is click on the Bulletin Board and it will take you to  
2 it? I mean, that would be easy.

3 MS. NAVARRETE: I believe there is. If you go to  
4 Tank Programs, there is a little list that says Bulletin  
5 you click onto.

6 MS. MARTINCIC: I don't mean a list. Make it on  
7 a box on the front page so that it's like -- the problem  
8 is, it is difficult.

9 MS. NAVARRETE: It may not be our call.

10 MS. MARTINCIC: It's difficult to navigate ADEQ's  
11 web site. I mean, weights and measures has a great web  
12 site, being in the industry, and it's kind of bigger font  
13 and kind of -- you know, it's like the web for dummies,  
14 you know.

15 I'd suggest looking at that if you can.

16 MS. NAVARRETE: To address your concerns, there  
17 is a new CIO, and that's one of the things they are going  
18 to be looking at, probably redo the web site, and I know  
19 it's hard to get there, but right now, just go to Tank  
20 Programs and then a list should come up, one of the  
21 bulletins.

22 MS. MARTINCIC: Okay.

23 CHAIRPERSON CLEMENT: Okay. Is there any other  
24 question on that or comment?

25 MR. GILL: I'm sorry, I'm pretty glad to hear

1 that they are on there, but I couldn't find it. I know it  
2 had changed form before. I found it before, but I  
3 couldn't find it the last time. And if DEQ could send out  
4 an e-mail to owner/operators and consultants that are  
5 listed that just says, this is the way you get to the  
6 bulletin --

7 MS. NAVARRETE: Give you a path.

8 MR. GILL: -- draft policies, and that kind of  
9 thing, it would be really appreciated.

10 CHAIRPERSON CLEMENT: I'm really glad that all  
11 that work got posted.

12 MR. DROSENDAHL: Me, too.

13 CHAIRPERSON CLEMENT: If you could just make it  
14 easier for people to access it, I think it would probably  
15 solve problems for you.

16 Also, if you wouldn't mind if I could get a copy  
17 of what was -- I have to put an annual report together and  
18 that will be very helpful. I will include that in the  
19 annual report, what bulletins were posted.

20 MS. NAVARRETE: Okay.

21 CHAIRPERSON CLEMENT: Thank you. We will just  
22 jump back. I know we have Ms. Huddleston here now, and we  
23 wanted to go back to the Attorney General's Office's  
24 presentation on conflict of interest, if that's  
25 acceptable.

1 MS. HUDDLESTON: I have Victoria Mangiapane from  
2 the Solicitor General's Office, and she will be doing the  
3 presentation today.

4 CHAIRPERSON CLEMENT: Thank you very much.

5 MS. MANGIAPANE: Hello everybody, I have some  
6 materials for you. I will just go ahead and give all of  
7 you one to keep.

8 Well, it's a pleasure to be here with you this  
9 morning. As was mentioned, I work in the Solicitor  
10 General's Office, and part of my role is to provide advice  
11 to boards and commissions. And under that I do technical  
12 appeals panel, so I did some training with them the end of  
13 last year, and I know Gail was on that panel as well and  
14 now has left, abandoned ship. You are needed everywhere.

15 Anyways, I'm going to spend some time with you.  
16 I know you are very busy and I understand that you have a  
17 lot on your agenda, so I'm going to kind of do just an  
18 overview.

19 I was asked to do open meeting law and conflicts  
20 of interest, so it helps me get warmed up to kind of go  
21 over the meeting law first. Some of these things are  
22 concepts that I'm sure you are well aware of, you work  
23 with every day, but it's always good to have a review of  
24 those issues.

25 The other thing helpful is if you have questions,

1 just kind of jump in. I usually do kind of a brief --  
2 normally I do power point presentation, which always goes  
3 long, so I've decided to do it kind of the old-fashioned  
4 way, so I've reproduced the power point with note areas so  
5 you can take notes, but power points never work. They  
6 sound good in theory but never tend to work well.

7           Okay. So let's go over the open meeting law  
8 first. And one of the resources I like to start out with  
9 is for all of you to know that the Arizona Agency Handbook  
10 that the Attorney General's Office puts out is on the web,  
11 and it's on the Arizona Attorney General's web site, and  
12 that's printed for you on the second slide, the  
13 [www.azag.gov](http://www.azag.gov).

14           Why that's important is in the Arizona Agency  
15 Handbook, there is a section in Chapter 7 on open meeting  
16 law. If you ever have a question or ever have any burning  
17 desire to know more about the open meeting law, that, what  
18 we call kind of our bible, is on the web, and I would  
19 really recommend if you have a question to look at that.  
20 It's easily accessible, and some of the sections that I go  
21 through in my presentation cite the chapter section in  
22 that book, so you can always refer back to that if you  
23 have a specific question.

24           Let's talk a little bit, sometimes being public  
25 officials we all kind of know about the open meeting law,

1 we know that it's required, but we don't really know the  
2 history of it, and sometimes I find that somewhat helpful  
3 to understand why it exists, and who it applies to. It  
4 pretty much applies to everybody, and it applies to all  
5 public bodies and, of course, as a commission, it applies  
6 to you.

7           But the open meeting laws also are called the  
8 sunshine laws, and they have a history in the United  
9 States. Every state in the U.S. has a sunshine law or an  
10 open meeting law. The theory behind that, the purpose  
11 behind that is to search the public's interest and to  
12 basically open up the work of government to public  
13 scrutiny, to stop secret decision-making and to allow the  
14 public an opportunity to be present while you're  
15 considering the business of the people.

16           So, in Arizona, our open meeting law first was  
17 enacted in 1962. It's gone through many different  
18 machinations over time, and what we have now is a pretty  
19 good open meeting law, and I think it's representative of  
20 most other states. So, if, for example, you ever served  
21 in another state, you would be subject also to their open  
22 meeting law. It's pretty similar from state to state.

23           So, as I mentioned, it applies to all public  
24 bodies. It applies to this body, but it's also important  
25 to know that it applies to your subcommittees and to

1 adviser committees of this body.

2           Under your statutes, you have the authority to  
3 create subcommittees to review certain issues. So, the  
4 open meeting law will apply to them. What that means, of  
5 course, is that the meeting of those subcommittees are  
6 open to the public. They are required to have notices and  
7 agendas. The only requirement they don't have to do is to  
8 prepare minutes, but our advice from our office is why  
9 would you not prepare minutes. It's kind of important to  
10 document what a subcommittee is doing, what they're  
11 talking about, especially if they are going to be making a  
12 presentation back to the full Commission. So we always  
13 recommend that you take minutes even though the open  
14 meeting law doesn't require that.

15           So, we kind of all know about what it is we want  
16 to apply to all open meeting law, apply to all meetings of  
17 this public body and any of your advisory committees.

18           So, what is a meeting? A meeting is a meeting of  
19 a quorum of the membership of the Commission. So I  
20 understand, there are eleven of you, so a quorum would be  
21 six. So anytime there are six of you, that is a majority,  
22 you can actually hold a meeting.

23           Without a quorum, of course, you don't have a  
24 meeting and you cannot take legal action. One of the  
25 things to remember, too, we all get a little confused

1 about what a quorum is, and I'd like to spend two seconds  
2 on this.

3           The simple definition in Arizona law is that it  
4 is a simple majority of the membership of the Commission.  
5 Now, unless your statutes provide anything differently,  
6 and as I have read your statutes, they don't have any  
7 special rules about them, so what that means is if there  
8 is eleven positions, the majority of that number, eleven,  
9 will always be the same. So, even if there is two  
10 vacancies or three vacancies, the majority number doesn't  
11 change. The quorum is still going to be six people, and  
12 that's why it's a little hardship when you have vacancies,  
13 and the governor's office knows that so they try to make  
14 sure that commissions are staffed even though sometimes  
15 that can be a challenge.

16           So, the purpose of a meeting, of course, is you  
17 have a quorum, and you are there to discuss, propose or  
18 take legal action. Now, that is a pretty broad definition  
19 of the open meeting law, and this is also covered not only  
20 in the statutes for the open meeting law, but case law  
21 interprets this as well. So, any time you get together to  
22 discuss, deliberate, consider, consult, anything with  
23 respect to any matter that is within the jurisdiction of  
24 this public body is technically legal action, so that's  
25 why. If you are going to be discussing business of this

1 Commission, it's required to be done in an open public  
2 meeting, so it's a pretty broad definition.

3           And one thing that we always like to talk about  
4 is how can you have a quorum. You can have a quorum by  
5 people physically being present. You can also have a  
6 quorum by people participating by phone, so if for some  
7 reason people weren't available, that's also another  
8 issue.

9           But it's also things to think about when you  
10 think about problems with violations of the open meeting  
11 law. You can create a majority by -- through internet.  
12 You can create a majority of board members over the phone,  
13 so all those things are really important to remember.  
14 Even though you may not physically all be together, you  
15 can still be creating a majority of the board somewhere.

16           CHAIRPERSON CLEMENT: I'm sorry. I didn't mean  
17 to interrupt you.

18           MS. MANGIAPANE: Please interrupt.

19           CHAIRPERSON CLEMENT: When we send out  
20 information, we often send it out by e-mail and it's  
21 distributed to the full Commission. If there isn't an  
22 exchange back and forth, is that okay, or -- I mean --

23           MS. MANGIAPANE: That's usually okay, depending  
24 on what the information is. Typically what you have to  
25 realize is that if you are sending out information, for

1 example, if you are getting information, putting together  
2 an agenda and the materials or anything like that, you can  
3 do that electronically. I know a lot of boards and  
4 commissions do that.

5           What you cannot do, of course, is to -- and if  
6 you are just kind of receiving your packet or your  
7 materials electronically and there is no discussion, there  
8 is no deliberation or anything else about that, that's  
9 fine. What the problem is, of course, is when you start  
10 communicating over e-mail, and you start doing the send  
11 alls and you are replying back.

12           What we instruct board members and commissioners  
13 to do is really the only thing that keeps you safe on  
14 e-mail would pretty much, "Are you going to be at the  
15 meeting on March 3rd?" "Yes, I'm going to be there."  
16 That pretty much should be it. Or "I didn't get my  
17 packet, can you send me my packet."

18           There really cannot be substantive conversations  
19 that way. The problem is -- now, that doesn't mean that  
20 maybe two of you cannot communicate together and this is  
21 always the kind of slippery slope problem. It's okay that  
22 one or two of you may discuss or have questions. You  
23 cannot go down that road of discussing to the point where  
24 you are asking that person's opinion on something, you're  
25 coming to a conclusion about something, you are sharing

1 what you may or may not do on a particular item. It's  
2 appropriate if you have a background question. But what I  
3 would query you with is, is that really important to do  
4 before a meeting. You should bring those questions --  
5 when you read materials and you get ready for a meeting,  
6 bring your questions and your comments to that meeting,  
7 because not only does it help you, it benefits the rest of  
8 your commission members and an expectation of the public,  
9 because when we see agenda, we expect for you all to have  
10 some discussion for us to understand. Anything that you  
11 are thinking about, we want to be able to be a part of  
12 that.

13           Obviously, there are some times where items on  
14 the agenda don't take a lot of thought or a lot of  
15 discussion, and that's okay, too. But I think the  
16 impression to the public has to be that you do whatever  
17 thought-making and decision-making here, you know,  
18 together, and that you answer questions together, so I  
19 would caution you about that.

20           So, e-mail is a little tricky. We have in fact  
21 the open meeting enforcement cases against public bodies  
22 that have violated the open meeting law through e-mail, so  
23 you have to be very careful. Your e-mails are public  
24 record. Anything that you produce as a public official  
25 related to your public position is a public record.

1           And I work with a lot of attorneys that sit on  
2 boards, and they get very nervous about this because they  
3 think, well, I don't want anybody coming in and taking my  
4 personal computer at work, so what I've told them is that  
5 if you want to archive your e-mails in a certain spot,  
6 that's a good thing to do, because if someone ever did  
7 make a public records request, you would hopefully have  
8 e-mails in one spot. These are all my e-mails regarding  
9 the commission and here they are. So it does have -- so  
10 just think about that.

11           CHAIRPERSON CLEMENT: Ms. Gaylord.

12           MS. GAYLORD: Most records retention policies, it  
13 allows people to get rid of voice mail messages and e-mail  
14 messages. Do we have a records retention policy?

15           MS. MANGIAPANE: You should. I don't know. You  
16 will have to ask your counsel about that.

17           CHAIRPERSON CLEMENT: Okay. Well, that's a good  
18 question.

19           MS. MANGIAPANE: Laurie Woodard is your counsel.  
20 Yes, all public agencies have requirements. You should  
21 ask that.

22           CHAIRPERSON CLEMENT: I'm not aware. I've never  
23 heard anyone present that to us and, frankly, until you  
24 just spoke, I was not aware that we couldn't -- when I get  
25 an agenda, I do a lot more interaction because I have to

1 set the agendas and work with the various subcommittees,  
2 and I frankly wasn't aware that I needed to retain, you  
3 know, all of those types of e-mails that go back and  
4 forth.

5 MS. MANGIAPANE: Yes, they are public records.

6 CHAIRPERSON CLEMENT: That's very important to  
7 know.

8 MS. MANGIAPANE: And you want to do that. So,  
9 that's why -- you know, we can all do that. It's actually  
10 -- when my client agencies communicate with me over  
11 e-mail, because then I have to think about where I'm  
12 archiving it, where I'm putting it so I can have access to  
13 it again.

14 So, think about that. If it's easier for you to  
15 not communicate by e-mail because you're not creating a  
16 record, think about the downside of that, too. I know,  
17 for example, with the Technical Appeals Panel, I think all  
18 of us interact by e-mail because they're all over the  
19 state and they get together rarely, so just remember that  
20 they are public records.

21 MS. HUDDLESTON: If, for example, the agenda and  
22 the supporting documents are sent to board members by  
23 e-mail, does each board member need to keep the e-mail or  
24 is it sufficient that ADEQ sent it out keeps it?

25 MS. MANGIAPANE: That's an interesting

1 distinction, and I don't really know what the requirement  
2 on that is. I would think that if you are the initiator  
3 of the e-mail, it's probably more important obviously that  
4 you retain, you know, your -- I -- as a habit, I keep all  
5 e-mails that are sent to me because obviously I'm usually  
6 a recipient of e-mails.

7 MS. HUDDLESTON: Those are more substantive.

8 MS. MANGIAPANE: Right. In practicality, I think  
9 what I've done, when we've gotten public records request,  
10 and as long as one person kind of retains it or has, you  
11 know, that responsibility to retain that on behalf of the  
12 body, then that's okay. You know, my gut is telling me I  
13 would try to retain them as long as you need to, and when  
14 you ask Laurie to find out what your records retention  
15 policy is, that's a good point, but it's better to be safe  
16 than sorry to keep all those things.

17 CHAIRPERSON CLEMENT: Mr. Gill?

18 MR. GILL: As a chair of the subcommittee,  
19 Technical Subcommittee, we basically have to come up with  
20 recommendations that the Commission is going to vote on as  
21 a recommendation to send forward to the director, or  
22 whoever, and what issues are involved with discussing --  
23 you know, coming up with that letter, basically? I mean,  
24 do we have to do that in front of the Policy Commission,  
25 the whole Commission.

1           MS. MANGIAPANE: Well, if you are meeting as a  
2 subcommittee, obviously that would be a public meeting, so  
3 anything that you are working on as a group should be done  
4 in a full group in an open public meeting.

5           If there are issues -- if you are saying that you  
6 do some of that work over the Internet, you know, it's  
7 going to be -- it could be a problem if you are -- if  
8 there is a majority of you working on those  
9 recommendations, because basically that's a meeting. You  
10 are having a meeting over the Internet by sending, you  
11 know, here's our recommendation, can you all give me your  
12 comments and get it back to me. And people are sending a  
13 reply all and everybody is seeing everyone's e-mails.

14           Everybody has to understand that that's a  
15 meeting. So what you need to do is -- my feeling is that  
16 work needs to be done in public. That work needs to be  
17 done as a subcommittee. If two or three people, however  
18 big your subcommittee is, and one or two people are  
19 working on a recommendation together to submit something,  
20 that's fine. What you don't want to have is a majority of  
21 a subcommittee doing that, and you don't want even two  
22 people over here working on that and then sending it out  
23 to everybody else to get comments, because then you are  
24 e-mailing substantively on issues with a quorum or  
25 majority of your subcommittee and that's a meeting and it

1 is not properly noticed on the agenda. That is a  
2 violation of the open meeting law.

3 MR. GILL: I can understand that, and we're not  
4 doing that. Basically, the subcommittees, the Financial  
5 and Technical Subcommittees are a public group so we have  
6 the discussions in the group. We come up with ideas for  
7 language and then there may be --

8 MS. MARTINCIC: You are just capturing it after  
9 the meeting.

10 MR. GILL: There may be two that are putting it  
11 together.

12 MS. MARTINCIC: It was discussed in the meeting,  
13 but you are capturing it in writing after the meeting to  
14 submit here, so that's not a problem.

15 MS. MANGIAPANE: Not a problem.

16 MR. GILL: And then we may end up coming up with  
17 language to present to the full Commission that may entail  
18 two or three Commission Members.

19 MS. MANGIAPANE: That's not a problem.

20 MR. MC NEELY: Our subcommittees are really one  
21 person. I think it's Hal. We don't really have people  
22 listed as a subcommittee. We have one person and then --

23 CHAIRPERSON CLEMENT: Then whomever from the  
24 Policy Commission shows up to participate.

25 MS. MARTINCIC: And it's public, and so members

1 of the public are there but --

2 MS. MANGIAPANE: Right. So, yeah. But you  
3 should know, I think, over time, if, you know, it's one  
4 person, obviously you can't have a meeting by yourself,  
5 right, if you are going to set a meeting. But the policy  
6 is -- and this is where I would just tell you, I would  
7 caution you that the policy of the open meeting law is  
8 obviously, if there is going to be three or four  
9 commission members there, you know, why not notice it as a  
10 meeting and make sure that you follow the open meeting  
11 law. Because if you are kind of setting -- you are doing  
12 kind of a standing committee, so I would -- even though  
13 maybe the membership floats around a little bit, that's  
14 kind of what you are saying, you have a standing  
15 subcommittee and we're going to appoint four commission  
16 members, but they're all floating positions, or three  
17 people.

18 MS. MARTINCIC: Actually, there is just a  
19 chairperson of the subcommittee, and then whoever wants to  
20 come to the meeting comes to the meeting, but they are all  
21 open meetings. We post the agenda.

22 MS. MANGIAPANE: That's good.

23 CHAIRPERSON CLEMENT: Attendance is issued  
24 dependent. The Policy Commission Members are more  
25 interested in one issue than another, but those meetings

1 are always posted and always public.

2 MS. MANGIAPANE: And you are posting it as a  
3 meeting of the subcommittee?

4 CHAIRPERSON CLEMENT: That's correct.

5 MS. MANGIAPANE: So, as long as a majority of you  
6 all don't show up.

7 MS. MARTINCIC: Which has never happened.

8 MS. MANGIAPANE: You all have other things to do,  
9 I understand.

10 MR. O'HARA: On your slide here at the top of  
11 page 4 it says, what if you don't have a quorum, and you  
12 don't have a meeting and you can't meet. And I know over  
13 the past four years we've had situations where we haven't  
14 had a quorum and we've continued with the open meeting,  
15 Policy Commission meeting, and my understanding was we  
16 couldn't take any action, but we did meet, we did go  
17 through the meeting. Am I right in saying we can meet but  
18 we can't have a defined meeting? Is that what it means?

19 MS. MANGIAPANE: I'm going to tell you no, and I  
20 will tell you why I say no. The reason is that the  
21 definition of a meeting -- and I'm just going to read it  
22 to you under the open meeting law, because if you are --  
23 you know, technically people say, well, if we're just  
24 meeting and we're going to talk about the things on the  
25 agenda but not take legal action, is that a problem. And

1 I'm going to tell you, yeah, it is a problem, because you  
2 don't have -- what you are doing is, part of taking action  
3 is the discussion and the deliberation, so basically what  
4 you could do, and we have told them as a practical matter,  
5 if you did that -- first of all, I wouldn't want to have  
6 -- I mean, if you don't have a majority, it's not  
7 technically a violation of the open meeting law because if  
8 there is not a majority of you there, it's not a meeting.

9           But if you are discussing or deliberating on  
10 something, you are going to have to end up doing it over  
11 again. So, for example, if you did that, let's say there  
12 is three of you here and you say, well, I don't want to  
13 talk about everything, but let's talk about Item 3 for a  
14 little bit, and you all start having that discussion. If  
15 your legal advisor would know, they would tell you, well,  
16 that's all fine and great, but you are going to have to  
17 basically redo that again once you do get a quorum and  
18 have an open public meeting.

19           Because part of that is, you are denying the  
20 public the information that you would use at a public  
21 meeting in your deliberation process and your discussion.  
22 You are also denying your other commission members that,  
23 and that would at least violate the spirit of the open  
24 meeting law. So, even though it may not be a technical  
25 violation because there is not a majority of you there,

1 you are not violating the open meeting law. Our office  
2 advises, don't even conduct a quasi meeting by talking  
3 about items on the agenda.

4 MR. O'HARA: But it it's not in public, though.  
5 We are doing it right here in front of the public with a  
6 court reporter. We just don't have seven people. I think  
7 our quorum is seven.

8 MR. GILL: It was seven.

9 MR. O'HARA: We voted on seven. I don't know  
10 why.

11 CHAIRPERSON CLEMENT: We may want to restate it  
12 at some point in time.

13 MS. MANGIAPANE: Obviously, you can't take legal  
14 action at all. Let me just remind you what the legal  
15 action definition is. It means a collective decision,  
16 commitment or promise made by a public body pursuant to  
17 the commission, the public body's charter, bylaws or  
18 specified scope of appointment and the laws of this state.

19 Meeting means the gathering, in person or through  
20 technological devices, of a quorum of members of a body at  
21 which they discuss, propose or take legal action,  
22 including any deliberations by a quorum with respect to  
23 such action.

24 So, it is a pretty broad definition, so the  
25 spirit of the open meeting law is, obviously, if you don't

1 have a quorum, don't be talking, don't even try to take  
2 action on the matters that relate to the public body.

3           So, if you need to talk about that in the parking  
4 lot or you need to talk about that and there is not a  
5 majority of you there, I'm not going to say that is a  
6 violation of the open meeting law. The purpose of that  
7 is, I wouldn't even try to hold a quasi meeting. I would  
8 tell you not to do it.

9           CHAIRPERSON FOSTER: Ms. Foster.

10           MS. FOSTER: I still have concerns with it. If  
11 it's open meetings, we follow these requirements, and an  
12 open meeting is where there is six of us to get together  
13 or not. If we have less than that, to me we are not held  
14 by these regulations, so if five of us get together and it  
15 is posted as a public meeting and we discuss items but do  
16 not take any action or votes on it, I don't see what we're  
17 not complying with.

18           MS. CAMPBELL: I think the problem with what  
19 you're saying, why the Attorney General's Office gives  
20 that advice, because when you meet, even without a quorum,  
21 whether we admit or not, things happen, and we don't have  
22 to actually take a formal vote to take legal action, so if  
23 we decide without a quorum, say, you know, next session we  
24 want to put this on the agenda, we talked about it and  
25 let's put this on the agenda, that in and of itself could

1 be interpreted, possibly, as legal action. That is a  
2 violation of the open meeting law.

3 MS. MANGIAPANE: I will tell you, and just be  
4 very, very honest about this. Everyone has different  
5 opinions on this. This is why lawyers all have different  
6 opinions.

7 Laurie is a member of the open meeting law, the  
8 enforcement team. I respect her opinions very much. I  
9 think she is -- probably what you would consider a strict  
10 constructionist of the law, and so I think she probably  
11 gives you a little more latitude.

12 But the one thing I would challenge you, and this  
13 is just something you all have to think about, as a public  
14 official you have to tell yourself what passes the gut  
15 test. Are you serving the public's interest when, you  
16 know, you meet in an area, because, for example, if a  
17 member of the public comes to this meeting and sees that,  
18 oh, well, they're not a quorum, they're not going to  
19 really hold a meeting, you know, I'm going to leave  
20 because nothing is going to happen, and then you guys all  
21 have substantive discussions about what they would have  
22 wanted to at least participate in or hear what you had to  
23 say, if you are not really going to redo that at another  
24 meeting, that really defeats the whole purpose of the open  
25 meeting laws.

1           Would I be a little nervous about that? If I was  
2 standing in the hallway and I had your court reporter  
3 here, and you were all sitting up there by your name  
4 plates and basically holding a meeting, that to me looks  
5 like a meeting. You have to realize what kind of a  
6 perception you are giving to the public. It looks like a  
7 meeting.

8           And my feeling is that the definition of legal  
9 action is pretty broad, and we have these debates a lot  
10 and different people may come on different sides of it.  
11 In reality, I have two jobs, keep my agencies out of  
12 trouble, number one, make sure you are acting properly.  
13 So part of that is basically making sure that you present  
14 well to the public and you are doing the right thing.

15           So, think about that. I'm not going to tell you  
16 that -- you know, your advisor will tell you what she  
17 needs to tell you and you may follow that advice, but just  
18 remember it has to pass a gut test, too.

19           I'm on top of page 5. Since we talked a little  
20 about circumvention of the open meeting law, we've talked  
21 about having serial discussions or serial e-mails. You  
22 may have a discussion like Gail and I, let's say we are  
23 commission members and we are going to have a chat, well,  
24 that may be all fine and dandy, but Gail's going to say --  
25 she's going to call Hal and Andrea and Karen and Theresa

1 and say, well, I have this conflict with Victoria, and we  
2 talked about it, so all we know that even though you have  
3 several little conversations, that would not be talking to  
4 the majority of the board, so we don't like to do that.

5 I don't know if you all have a staff, but one of  
6 the things that the meeting law changed over time, staff  
7 used to be kind of in the background, nothing bad could  
8 happen to them. You can't violate the open meeting law  
9 through staff. You can't have staff do what you can't do.  
10 So, even if, for example, you call up everybody and see  
11 how they are going to vote on this issue, you obviously  
12 can't do that. You can't have staff doing what you  
13 wouldn't do.

14 Let's talk a little bit about notice of meetings,  
15 and a lot of this is information that you all just need to  
16 have in the back of your mind, especially if you are  
17 running a committee or subcommittee.

18 Notices, you want to put them obviously in a  
19 location where the public has access to them. They should  
20 be posted during normal business hours, and it should be a  
21 place where people can't take it away. Some people --  
22 I've had some school districts, they will post a notice  
23 with a little thumb tack on it, and it's gone. That's  
24 really interesting. Somebody takes it off and then really  
25 you don't have a posting of your notice.

1           So the contents of the notices is, you know,  
2 where, what, when, how, who's going to be there, what  
3 time. One of the things to remember with the open meeting  
4 law, which I think is a pretty easy requirement to me in  
5 my opinion, is 24 hours in advance of a meeting. So, it  
6 really should -- it's not really a burden on agencies. 24  
7 hours in advance, you should be able to get that notice  
8 out to the public so that they know what's really  
9 happening. Obviously we recommend doing it sooner than  
10 that so people have time to see your posting and to come  
11 to a meeting if they're interested. The one thing that's  
12 important, of course, is that not only the notice has to  
13 be available 24 hours in advance, your agenda and the  
14 board materials have to be available to the public 24  
15 hours in advance if they want to see them.

16           Now, for example, you all get packets probably  
17 electronically. If a member of the public wanted your  
18 background information, providing that things weren't  
19 confidential or attorney-client privilege, or other  
20 confidential documents, they would be able to obtain a  
21 copy of that through your staff, and that again is a  
22 24-hour rule.

23           Amendments to your agenda have to be done 24  
24 hours in advance, so that's another thing to remember.  
25 Your agendas look pretty good, I'd say. Make sure that

1 they're understandable, that you don't use acronyms. Some  
2 agenda items, I could tell you that you can violate the  
3 rules of good grammar and other things, because the idea  
4 is to give information to the public. So, if you were  
5 somebody that didn't know anything about the Underground  
6 Storage Tank Policy Commission, you would want to be able  
7 to look at your agenda and go, that looks really boring.  
8 No, that looks really interesting. I'm going to show up  
9 and participate in that meeting.

10           So, you want to make sure you are not using  
11 acronyms or legalese or anything like that and incomplete  
12 sentences or run-on sentences are actually really helpful  
13 in an agenda. You wouldn't want to see that anywhere  
14 else, but you'd be surprised how helpful they are to the  
15 public to understand what you are doing.

16           Bottom of page 7, we talked a little bit, these  
17 are some pitfalls that agencies fall into sometimes, old  
18 business, new business, personnel, announcements. We  
19 don't like those kind of headings. They are legally  
20 insufficient under the open meeting law.

21           Now, some people still use those as categories,  
22 and then they have bullet points underneath them, and as  
23 long as you are doing that, that kind of passes the test.  
24 But if you are going to have a director report or chair's  
25 report, you have to have some substance there. And then

1 this applies to your subcommittees as well. If you are  
2 going to talk about an issue, at least describe it so that  
3 people have an idea what you are talking about.

4           On top of page 8, if it's not in the agenda, you  
5 obviously can't discuss it. Right?

6           Now, there is a little bit of a wiggle room in  
7 the open meeting law. It allows you to talk about matters  
8 that reasonably related to the agenda item. Now that has  
9 to be, you know, again if you get into a pickle, you talk  
10 to your lawyer about does this agenda item give us the  
11 scope to talk about these other issues. Usually, if it's  
12 read conservatively, obviously it's kind of a reasonable  
13 person test. If you talk about this, would it include --  
14 would this logically include something else.

15           There is Tanque Verde, they had an annexation  
16 issue. They listed one particular parcel on the agenda.  
17 There was another piece that was attached to it, but that  
18 wasn't on the agenda, and they kind of said, well, it's  
19 reasonably related, it's physically attached, everybody  
20 would know, but that also meant that piece of land as  
21 well. They took an action on it. It was held invalid  
22 because the agenda was not specific enough to include that  
23 piece of property, even though everybody in the world  
24 might say, oh, we knew it was added. Well, people  
25 protested because they didn't know, and so again, that

1 wasn't specific enough.

2           Backup materials we talked about again have to be  
3 available 24 hours in advance to the public.

4           We all take minutes. You all have a nice court  
5 reporter, so that's great. Minutes must be available to  
6 the public at least in a draft or some form of those  
7 minutes within three working days of your meeting. So  
8 even if you don't produce them in writing, they have to be  
9 available in some format. Somebody should be able to come  
10 to your staff person and say, I either want to tape or I  
11 want the transcript or I want your draft minutes.

12           Contents of the minutes, they don't have to be  
13 verbatim but they do need to adequately describe generally  
14 what you discussed about. There does have to be a  
15 description, of course, if a legal action is taken, and  
16 there is a little bit more information updated from those  
17 sheets, typically the name of the motion, and how the vote  
18 was taken, of course.

19           We already talked about access to the minutes.

20           Let's spend a little bit of time about public's  
21 rights, which is the heart of the open meeting law. The  
22 public has the right and needs to be permitted to attend  
23 your meetings. You cannot require them to sign in.  
24 That's one practice that sometimes agencies do and they  
25 don't really think about that, but you cannot require

1 anybody in the public who wants to come to these meetings  
2 to sign. That goes, of course, for subcommittees, too.

3           Now, typically if you can -- the members of the  
4 public, their right is to attend and to listen. Their  
5 right is typically not to participate or speak; however,  
6 you have an interesting statute which requires basically  
7 what we call call to the public. You have a requirement,  
8 49-1092-F that says that at all meetings and the  
9 subcommittees, you shall provide an opportunity for public  
10 comment. So basically because your statute requires that,  
11 you have an open call to the public, and they may address  
12 you on items on your agenda. They may also address you on  
13 items that are not on your agenda.

14           So, I'll spend a little time on that since I know  
15 some of you probably know that distinction, but typically  
16 if it's a matter on your agenda, you may hear from the  
17 public and you may obviously address -- you may consider  
18 those comments and address those comments when you talk  
19 about matters on the agenda. If the matter is not on the  
20 agenda, you are limited, so you can hear their  
21 presentation, you can certainly give them the time of  
22 however they want to address you, but you have three  
23 options. You can direct your staff to study the matter.  
24 You can respond now. We will be talking about criticism  
25 in a minute. Or you can schedule the matter for a future

1 board meeting. Those are usually the two options you have  
2 for items that are not on your agenda.

3           Responding to criticisms sometimes, which doesn't  
4 happen too often, but if you do get a member of the public  
5 that wants to openly criticize the Commissioner or has a  
6 beef with the chairperson or someone else, you may -- that  
7 individual may respond to the criticism professionally,  
8 briefly, and then move on.

9           What you cannot do, of course, is to have a  
10 discussion amongst the board members and not all of you  
11 can start responding to the criticism. So, you just want  
12 to make sure that you designate the chair, or the one  
13 person that is being communicated with, you may certainly  
14 respond back and then carry on.

15           The public has the right to record proceedings.  
16 That can be done in any format. I know this is a little  
17 disconcerting for the Gary Hall matters. We were recorded  
18 all day long, and it's a little strange when you are  
19 sitting in a meeting and you got all these news cameras  
20 there, but they may record, videotape, record, et cetera,  
21 any portion of your meeting unless it starts to interfere  
22 with your business. And that's a judgment call that your  
23 chair will make and with consultation with legal counsel.

24           Executive sessions, you all know there are seven  
25 statutory reasons to go into an executive session. If you

1 ever had an executive session, your counsel will -- first  
2 of all, it would be properly noticed on your agenda. Your  
3 attorney will advise you on how to handle those things.  
4 But just as general knowledge, executive sessions are the  
5 exception, not the rule, for open meetings, and of course  
6 even if you have legal advice questions or other matters,  
7 you don't necessarily need to go into executive session to  
8 do that. Sometimes agencies just feel comfortable with  
9 that, and you can discuss those kinds of questions in the  
10 open session. If your attorney feels comfortable  
11 answering them, they don't think you are going to  
12 compromise anything that you are doing, it's appropriate  
13 to do that.

14           So, just as a background, remember that you need  
15 to have a motion to go into executive session, you need to  
16 state the reason why you are going into executive session  
17 -- that should also be on your agenda, and whoever is  
18 chairing those executive session needs to give an  
19 admonition to the members of the public body, and usually  
20 the public, which is minutes of and discussions made in  
21 executive session, and by law should not be released to  
22 any other person outside those executive sessions. If  
23 that's an important statement to make, and typically I  
24 prefer that you do that in open session while people are  
25 leaving the room, while you are all getting ready to go

1 into the executive session, it's a reminder to all of you,  
2 it's a requirement of the open meeting law, and it's also  
3 a reminder of the public that this is a portion that is  
4 not open to you, but we're here, we're doing it legally,  
5 this is why we're doing it.

6           Typically if you go into executive session, it  
7 will probably be for legal. People that can go into the  
8 executive session are those that are, quote/unquote,  
9 essential. At your executive session, it would be  
10 commission members, your lawyer, maybe a staff person to  
11 take minutes. You do have to take minutes of an executive  
12 session. They don't have to necessarily be reported in  
13 any particular style, so typically one staff person will  
14 be appointed.

15           Our recommendation, of course, is that if you  
16 have executive sessions, that you keep those tapes of  
17 those minutes separate from regular minutes, you know,  
18 either change a tape or have somebody else do it, or maybe  
19 you could have the court reporter just designate it to  
20 commission members to handwrite executive meetings just  
21 separately.

22           Let's go on to -- let's just talk a little bit  
23 about sanctions, and then we'll be kind of wrapping up the  
24 open meeting law unless you all have any specific  
25 questions.

1           Are there sanctions for violating the open  
2 meeting law? Yes, there are. I think some of you have  
3 gone through some training with the governor's office, you  
4 know generally what they are.

5           The AG's office is responsible for enforcing the  
6 open meeting law, as well as the county attorney, and they  
7 all have jurisdiction to do that as well, but the Attorney  
8 General's Office takes the lead role in that.

9           And typically, the most important sanction, which  
10 I think is problematic for public agencies, is that if you  
11 take action of violation of the open meeting law, or if  
12 you're meeting as a whole is conducted in violation of the  
13 open meeting law, for example, you don't have a proper  
14 notice, you don't have a proper agenda, you don't have a  
15 quorum of people there, basically the first thing that  
16 happens is that your actions are null and void, so I'm not  
17 going to spend time about that, but there is a  
18 ratification process, but that's the biggest harm for  
19 public agencies is the action you take is not valid, and  
20 you either have to redo that or, you know, somehow  
21 otherwise cure it.

22           Like I said, the AG's office has the  
23 responsibility to maintain that you have an attorney every  
24 month that takes calls from the public about violations of  
25 the open meeting law.

1           As public officials, you may individually be  
2 responsible for violation of the open meeting law, not  
3 just the public body. You can be sanctioned up to \$500  
4 civil penalty per violation.

5           The other thing, of course, is you can be  
6 required to attain your own attorney if, for example, the  
7 State may not represent you if it was a knowingly and  
8 intentional violation. We have had those in the past, and  
9 after you have been educated and trained and you still  
10 intentionally violate the open meeting law, and it can  
11 result in removal of office.

12           So, there are sanctions, there are  
13 responsibilities and consequences for violating the open  
14 meeting law. We don't like to highlight those, but it is  
15 something that's out there.

16           MR. O'HARA: From a practical standpoint, how  
17 often does that happen? Frequently?

18           MS. MANGIAPANE: Typically I will tell you that  
19 the AG's office, we do investigate a lot of complaints.  
20 The majority of those are typically usually kind of  
21 innocent mistakes or people that don't -- really are not  
22 completely educated. And our first goal is to educate.  
23 This is why we do a lot of training. This is why we do  
24 refresher courses with boards and commissions and school  
25 boards. But there are intentional violations of the open

1 meeting law, and those sanctions, of course, are more  
2 significant, and they can result in -- and I would say,  
3 you know, it is the exception, not the rule, but those --  
4 you know, they have resulted in significant violations of  
5 -- against a public body, and sometimes if you read about  
6 things in the newspaper, about a lot of times they are  
7 school boards and other commissions, and other town  
8 councils, things like that, so --

9 CHAIRPERSON CLEMENT: That was very, very  
10 informative, and I think there are a few practices we may  
11 need to improve on, but thank you very much.

12 MS. MANGIAPANE: We are going to jump to  
13 conflicts of interest, and there are some materials in  
14 your packet. I want to tell you what you have there and  
15 then spend a little time talking about it, and if you have  
16 any questions, we will certainly go over that.

17 You have a memo. You also have your organic  
18 statutes, which talk about the commission, and I'm sure  
19 you have those.

20 You also have, like I mentioned, Chapter 8 of the  
21 agency handbook. I reproduced it for you because I think  
22 conflicts of interest are a little more tricky and there  
23 are things that you really need to do on your own. There  
24 are things that you need to think about individually,  
25 because your attorney is not necessarily going to know

1 what your conflicts are. Nobody will know. I will talk  
2 to you about them now, and then you can talk with your  
3 lawyer and get some consultation and then decide if you  
4 really do have a conflict of interest.

5           But I want to just tell you, just kind of do an  
6 overview, the commission has specific conflict of interest  
7 statutes, as well as the general Arizona statutes which  
8 apply to you, and those are also reproduced for you.  
9 Those are 38-501, that section in your packet.

10           Basically again, we'll kind of start off with the  
11 history of why we have conflicts of interest statutes, of  
12 course, to discourage any public official that has an  
13 interest in a matter before them, acting as a public  
14 official, that you remove yourself from that process so  
15 that you are not gaining any property or financial  
16 interest in taking actions as a public official.

17           So, let's just review the statutory standard, and  
18 this is on page 1 of my materials, and this is just  
19 important to kind of start off.

20           "Any public officer or employee who has, or whose  
21 relative has, a substantial interest in any decision of a  
22 public agency shall make known such interest in the  
23 official records of such public agency and shall refrain  
24 from participating in any manner as an officer or employee  
25 in such decision."

1           Okay. So, every single one of those buzz words,  
2 of course, is defined in the statute. The first thing  
3 would be, what is a substantial interest. A substantial  
4 interest would be a pecuniary or proprietary interest,  
5 which, of course, means property or money, that is either  
6 direct or indirect, and it could be an interest of  
7 yourself, or your relative.

8           Okay. Now, typically these are -- on page 2  
9 there is some elements for you to evaluate as to what goes  
10 on, and, you know, the one major question you can kind of  
11 ask yourself is will the decision affect either positively  
12 or negatively, an interest of myself or my relative. And  
13 a relative is defined pretty broadly. It's your spouse,  
14 child, child's child, your parent, grandparents, brother  
15 or sister of the whole or half blood and their spouses and  
16 their parents. So, it's kind of this way and this way.  
17 It's pretty broad. So, you have to kind of think of those  
18 issues. And whether you have a property or a financial  
19 interest, you know, this could relate from employment --  
20 that's probably the most typical thing. Employment is  
21 number one. You need to kind of think about the  
22 employment of yourself, your spouse, your relatives,  
23 because -- or contracts. Contracts is another big issue.  
24 People who contract are going to leave with the state.  
25 Especially in your area, I'm going to talk about your

1 conflict of interest statutes. Some of you are  
2 statutorily required to be owners and operators, so  
3 obviously you have an interest, so we will talk about that  
4 in a minute.

5           So don't -- for a minute, don't think about your  
6 direct conflicts or your direct involvement in Underground  
7 Storage Tank, basically the program. Think about other  
8 things. Think about your spouse's employment, your  
9 children's employment, any kind of other financial  
10 property interest that you have that may even remotely be  
11 connected to your public official position.

12           So those are the things you need to think about  
13 and is the interest property or money. And those are the  
14 kinds of things you need to worry about. It's different  
15 than thinking about sympathy or bias or things like that.  
16 We will talk about that in a second, but these are kind of  
17 tangible interests, whether you have a property or money.

18           And there is a definition of remote interest, and  
19 this is in your packet. This is in the chapter 8 in the  
20 AG's office. There are statutory requirements of what we  
21 call remote interests. If you have any of these, these  
22 are not considered a conflict of interest. And generally  
23 they're -- let's see. I don't know how many there are.  
24 There are probably about seven or eight of them, but I  
25 don't want to spend a lot of time on these, but I think if

1 you have specific -- you need to review these to see if  
2 you have any of these, and technically, just to give you  
3 an example, some of these are, for example, insignificant  
4 stock ownership. If you don't have a lot of stock in a  
5 particular company, and there is a matter before you that  
6 could affect that particular company, is that going to be  
7 an interest that you need to disclose. If it's a remote  
8 interest, you don't need to disclose it and you may still  
9 participate in that matter.

10           Landlord/tenant relationships are usually not.  
11 They're considered a remote interest.

12           Nonprofit corporations, if you sit on a board of  
13 a nonprofit corporation, that's going to be considered a  
14 remote interest if there was an issue that might affect  
15 that company.

16           So, I encourage you to review these, but I don't  
17 want you to expect -- I am not going to spend a lot of  
18 time on it, because if you have them, make sure you look  
19 at these, and also look at these remote interests in  
20 respect to your relatives. If your relatives' interest is  
21 classified as a remote interest, that is not a conflict of  
22 interest for you and you don't need to disclose these.  
23 But you need to do these thought processes on your own.  
24 If you have a question while you're going through these,  
25 definitely call your attorney.

1           I get calls a lot from the Technical Board Panel,  
2 because things come up, my sister-in-law, they have a  
3 project pending, is this going to be something that I need  
4 to worry about, so you need to think about those kind of  
5 things.

6           What I really want to spend some time on is page  
7 3 of my outline, is your specific conflict of interest  
8 provision, because now that you know a little bit about  
9 the general Arizona provisions, you have some specific  
10 ones in your statute, and there are three them.

11           The first one I'm just going to read to you,  
12 because I paraphrased on some of the statutes.

13           This is 49-1092, subsection C. The first one is,  
14 "Notwithstanding (A.R.S. 38-501, et seq (Arizona's general  
15 conflict of interest statute), a commission member may  
16 discuss and vote on issues of general applicability to the  
17 program established pursuant to this chapter unless the  
18 member has a direct pecuniary or proprietary interest."

19           Now, the issues of general applicability is  
20 defined in your statute. That's also under 49-1092,  
21 subsection H, and it means an issue that affects a  
22 substantial number of the constituents of the program and  
23 therefore qualifies as a remote interest as defined in  
24 38-502.

25           So, what this means is, if there is a matter or

1 an issue before the commission and it's one of general  
2 applicability to all people in that program or all  
3 constituents, if you are a person that falls into that  
4 category as a constituent or a participant in that  
5 program, you may still vote and take action on that. What  
6 this law is telling you is, the Arizona general statutes  
7 will probably qualify that as an indirect or even maybe a  
8 problem to qualify as a conflict of interest. Your  
9 statutes are taking that away. Your statutes are saying,  
10 you know what, we recognize that some people will be  
11 program participants, will be constituents and we're going  
12 to allow to vote and take action as long as the matter is  
13 an issue of general applicability and you don't have any  
14 kind of direct pecuniary interest. I'm sure this has  
15 probably come up in the past and you pretty much  
16 understand that one. And it allows you -- of course, the  
17 interest behind that is that this Commission is made up of  
18 people with special expertise, and there is a reason we  
19 want you here, so we don't want you to be conflicted every  
20 time there is a issue before you.

21           Let's go on to number 2, "A commission member  
22 shall not vote on or otherwise participate in any manner  
23 on a specific recommendation of the commission relating to  
24 a particular site if the member has been identified as an  
25 owner or operator of that site."

1           That one is a little easier. So that's obviously  
2 a direct problem. So the elements to evaluate, I just do  
3 this so that you can kind of -- this is kind of a way to  
4 probably analyze your issue.

5           "Vote" or "otherwise participate in any manner"  
6 is pretty broad, so obviously if you are an owner/operator  
7 and there is an issue the commission is dealing with, I  
8 want you out completely. That means not on a  
9 subcommittee, not discussing, not deliberating, you need  
10 to be completely removed from that because the statute  
11 requires you may not otherwise participate. So that's  
12 kind of a direct one.

13           The other side of that, No. 3, is kind of a tail  
14 end of that, which is, "A commission member shall not vote  
15 on or otherwise participate in any manner on a specific  
16 recommendation of the commission relating to a particular  
17 site if you receive a significant portion of income  
18 directly from a person identified as an owner or operator  
19 of that site."

20           So, all the development of the past, No. 2, you  
21 receive a significant portion of income directly from a  
22 person identified as an owner or operator of that site.  
23 So, all those elements of the past No. 2 you need to look  
24 at, plus the issue of significant portion of income.

25           And that's defined -- I love this statute, too --

1 is to define an another statute. So significant portion  
2 of income is defined as more than -- 10 percent or more of  
3 gross personal income for a calendar year or 50 percent or  
4 more of gross personal income for a calendar year if the  
5 recipient is over 60 years of age and is receiving that  
6 portion under retirement, pension or similar benefits.

7           So, again, if you are -- if you are getting  
8 financial interests from an owner/operator and it  
9 constitutes a significant portion of income to you, then  
10 that can disqualify yourself as well.

11           Has anybody ever had that issue? It seems you  
12 haven't? No? Maybe you don't know.

13           CHAIRPERSON CLEMENT: I don't know that we have.  
14 All right.

15           MS. MANGIAPANE: All right. Let me go over a few  
16 of the other general standards. The reason for the  
17 standards we kind of talked about a little bit, but, of  
18 course, it's to remove or limit the possibility of  
19 personal influence which might bear on your official  
20 decision-making.

21           I want to remind you, the law requires strict  
22 compliance. It's not enough to say that you are ignorant  
23 of the law, that you are ignorant of your relative's  
24 interest. That hasn't flown before in court, so it is --  
25 it's incumbent upon you as the public official to

1 investigate your conflicts and possibly those interests of  
2 your relatives. So preliminary stuff to take is kind of  
3 -- we've already kind of done this a little bit -- is to  
4 think a little bit about how a conflict of interest can  
5 occur.

6           Obviously, you have your direct issues if you are  
7 an owner or operator of a site. Remember, if you are a  
8 direct owner or operator and there is an issue of  
9 applicability, it's not going to apply to anybody else,  
10 then it's not going to apply to you, it's not a problem.

11           If you are being zoned in on it and it's going to  
12 be your particular interest at your particular site, and  
13 you are the owner or operator, we all know you kind of  
14 need to get out of that whole decision-making process.

15           So, just remember the law does not require  
16 intent, so you can -- even innocent violations can be a  
17 problem with conflict of interest statutes.

18           One thing to remember is what your practice is,  
19 of course, to file your conflict of interest forms and  
20 that is required by the state statute, so there are  
21 conflicts of interest forms that are provided, and your  
22 attorney or your staff can help you with what those are.  
23 You need to disclose them and, again, those are public  
24 record. So the reason why we disclose them is if someone  
25 were to come in and say -- most people will say something

1 like, well, I have a conflict of interest on that so I'm  
2 not going to vote on this matter, and that is really not  
3 sufficient. You don't really need to go into a long  
4 explanation at the open meeting, but my recommendation to  
5 you is to at least say something of substance, fill out  
6 your form, and you can do that either before the meeting  
7 or after the meeting, but just make sure that you have  
8 that.

9           A lot of times, too, if you have standing  
10 interests, if you are the owner or operator of certain  
11 sites, my recommendation is that you have a standing  
12 conflict of certain things, fill out your disclosure forms  
13 and make sure they are on file with your agency so if  
14 someone came in and wanted to see -- I want to know Mike  
15 O'Hara's conflict of interest, if he's filed any forms, if  
16 he's an owner or operator, I want to know what he owns and  
17 operates, so they are all filed with the Commission.

18           MR. O'HARA: My understanding is that we've never  
19 taken any action or never will on a specific site. It's  
20 all generally applicability. So, given that overriding  
21 thought, do we need -- is there any conflicts of interest  
22 that we need to be notifying the Commission, or writing,  
23 filling this thing out?

24           MS. MANGIAPANE: If you feel comfortable, no.  
25 You don't need to do that if you don't feel you need to do

1 it now. But if, for example, there were specific  
2 recommendations that were coming, and I know that your  
3 statutes can provide for a lot of different  
4 recommendations this body can make, and if for some reason  
5 it was going to, you know, affect -- if you were an owner  
6 and it's going to affect you more than other people, you  
7 may want to disclose that, and so you really need to think  
8 about that a little bit.

9           If like, for example, this was a geographical  
10 area and you were maybe a 70 percent owner and there were  
11 other people there, too, but you were a majority owner,  
12 you would probably want to disclose that because my feeling  
13 is you always take the high road and disclose when you  
14 feel it's important to disclose.

15           It's no different than, you know, probably -- I  
16 know, for example, with the TAP, they're practicing it now  
17 because their statutes have changed and they are more  
18 stringent. I'll always tell you that if that's ever  
19 changed, they usually get more stringent in this area, not  
20 more relaxed, and they kind of have standing disclosures.  
21 This is who I work with, this is who I've been contracting  
22 with, and so, you know, you kind of have those.

23           Even now, they're actually required to disclose  
24 potential conflicts, which is really interesting. I don't  
25 know if it will ever happen to this Commission, but there

1 are other requirements out there that are even more  
2 stringent than this one, so, when in doubt, my feeling is  
3 disclose generally and just have those in the file with  
4 the Commission.

5 CHAIRPERSON CLEMENT: I have a question -- excuse  
6 me.

7 MS. FOSTER: Go ahead.

8 CHAIRPERSON CLEMENT: Often issues come to us  
9 because someone has knowledge on the Commission about a  
10 specific activity or incident that occurred at one or more  
11 sites than they're involved with, and so that's  
12 information, and that may eventually get to an agenda  
13 item. Is that problematic in that sense that -- and that  
14 issue may then -- is typically, as far as I know what  
15 we've talked about, has general applicability, but the  
16 reason that it gets raised at this level is because  
17 someone has personal knowledge about something.

18 MS. MANGIAPANE: Right. I think, though, I think  
19 it would be naive and probably against the public's  
20 interest if you did not use your knowledge and your  
21 experience. That's what you're here for.

22 One of the issues that comes up with that,  
23 though, is are you basing decisions on information that  
24 you personally have that nobody else has. Some of that  
25 issue is, as long as that information is shared and all of

1 you are kind of -- as a public body you make those  
2 decisions collectively, and that information is provided  
3 to everyone. At some point if that comes up, for example,  
4 if you're doing recommendations as a full commission, that  
5 basically there can be full disclosure of information.

6           And we will talk a little bit about bias and  
7 prejudice because it wouldn't prohibit you from  
8 participating, if you have that knowledge, but where the  
9 line starts coming is, you have to kind of do that little  
10 soul-searching feeling, of whether you can be -- are you a  
11 balanced presenter of information and can you still feel  
12 that you can make an unbiased decision on it.

13           I recognize that this board is not like a  
14 judicatory board or anything where you are basically doing  
15 things where people present cases to you, and you may have  
16 the issue of bias or prejudice a little more salient in  
17 those kind of situations. But the sharing of knowledge, I  
18 think, is important, and I think if you feel that you can  
19 be unbiased about it or if you have a very specific sense  
20 about things, you have to make sure you kind of disclose  
21 that and let your fellow Commission members know that you  
22 feel this way about some things in the Commission.

23           No, I think it would be actually against the  
24 public's interest if you didn't use that information, but  
25 as long as you share with everyone, that's fine.

1           CHAIRPERSON CLEMENT: Ms. Foster.

2           MS. FOSTER: Wouldn't it be best to have an  
3 owner/operator to declare a conflict of interest and would  
4 that conflict of interest be forever, or do I have to do  
5 it every time?

6           MS. MANGIAPANE: Well, when I refer to standing  
7 conflicts, if you are an owner/operator of certain sites,  
8 I think it's always helpful in my opinion to have that  
9 information disclosed for your Chair, and the reason why  
10 is because sometimes we all keep each other -- we all  
11 remind each other and keep each other honest, like, oh,  
12 Michael, don't you own whatever.

13           Obviously, you probably remember that, but it's  
14 always helpful in my opinion to have what I call standing  
15 conflicts, and as long as you are a member of the  
16 Commission, you don't have to really update those unless  
17 they change. But if you were an owner/operator of certain  
18 things, I think it's helpful.

19           For example, I know in some of the agencies I  
20 work with, we have kind of -- and I usually retain them,  
21 too, because as the attorney I like to know people's  
22 standing conflicts or what their employment issues are so  
23 when they call me I can properly advise them. So  
24 typically I think it's helpful to have that. That's a  
25 style thing, and it's kind of just a best practices issue

1 on my part.

2           But the legal requirement is only if you have a  
3 legal conflict of interest do you need to disclose it.  
4 But my feeling is you want to get the most help you can  
5 from your staff and from your lawyer, and so if you are an  
6 owner/operator, and that's your position on the  
7 Commission, I'd recommend that you just jot on a little  
8 memo, these are my ownership interests and these are the  
9 places that I am identified as an owner/operator, and just  
10 keep those on file. I think that's helpful.

11           We talked a little bit about the appearance of  
12 impropriety, and I guess part of that is something that we  
13 need to be sensitive about, because even when an actual  
14 conflict of interest doesn't exist, you need to be  
15 sensitive about the appearance, and we've kind of touched  
16 about that a little bit.

17           Whenever you have any specific questions, you can  
18 always raise those with your attorney. Even though it may  
19 be uncomfortable, maybe you know someone really well,  
20 maybe they're your best friend or maybe there is someone  
21 with another business interest, et cetera, et cetera, so  
22 think about that.

23           Other prohibitions, these are just a little few  
24 things that apply to public officials in general. The use  
25 of confidential information for personal profit, sort of a

1 no brainer, but some things to think about. When you are  
2 a public official you can't obviously use information that  
3 you gained in this position to financially better your  
4 position or to gain any kind of benefit of that.

5           Using your position, you may not use your  
6 position to attain anything valuable, although I don't  
7 know what you would get. But it doesn't mean you can't  
8 put it on your record. Somebody asked me that. Can I put  
9 it on my resume to get a better job? Absolutely, yes, you  
10 can do that. If that gets you a better job, more power to  
11 you. But that's appropriate. It's just anything else  
12 that might rise to the level of getting something of value  
13 by using your position.

14           Additional income, that's kind of the --  
15 actually, you are not compensated for the position.  
16 You're reimbursed for you costs so that's --

17           MR. GILL: And we have no staff.

18           MS. MANGIAPANE: And you what?

19           MR. GILL: And we have no staff.

20           MS. MANGIAPANE: And there are criminal penalties  
21 for violation of the conflict of interest statute. I  
22 attached to you some advice. These are basically snippets  
23 from AG's opinions on conflict of interest stuff.  
24 Sometimes it's helpful because sometimes the issues have  
25 come up, you can kind of see a little bit of the analysis

1 on about how we look at conflicts of interest, and  
2 sometimes I've had some board members say, wow, that's my  
3 question. And I give you the opinion.

4           Actually, there are some other ones also in the  
5 materials on the AG's handbook, so if you ever get a  
6 question, you can spend some time, should you ever have  
7 any conflicts in interest.

8           CHAIRPERSON CLEMENT: That was excellent. Very  
9 much appreciated.

10           MS. MANGIAPANE: Oh, you are very welcome.

11           CHAIRPERSON CLEMENT: I think there are some  
12 opportunities for us to improve our practices and you've  
13 highlighted them very well.

14           Do any of the other commission members have  
15 questions?

16           I really appreciate you coming today. Thanks.

17           I think right now, that was a little  
18 overwhelming, let's take a short break, five to ten  
19 minutes. Thanks.

20           (A recess was taken at 10:17 a.m.; resumed at  
21 10:28 a.m.)

22           CHAIRPERSON CLEMENT: We are temporarily missing  
23 Karen Gaylord. She had a conflict at ten and she will be  
24 rejoining us, and Phil McNeely has just stepped out of the  
25 room. He will be rejoining us momentarily.

1           If the Commission members don't mind, I did get a  
2 speaker slip that's relevant to the public meeting, and I  
3 think we should just handle that right now.

4           So, Mr. Vannais.

5           MR. VANNAIS: Leon Vannais with Tierra Dynamic.

6           I had one question and one comment about the  
7 presentation that was just given. There was some concern  
8 on everybody's face about e-mails, and I spoke to Mrs.  
9 Mangiapane, who did the presentation, if DEQ would set up  
10 a dummy e-mail account, it could be called UST Policy  
11 Commission public e-mails as a cc, then she said that  
12 might satisfy the requirements for retaining those  
13 documents so that each individual Policy Commission member  
14 wouldn't have to privately archive those, they can all be  
15 archived at one e-mail address.

16           The second one was a question. On occasion, the  
17 UST Policy Commission members are provided with documents  
18 that are not distributed to the general public, but I was  
19 wondering, are those documents being deposited somewhere  
20 in public files so that if the public would like to get a  
21 copy of those that they are accessible? I don't know if  
22 that's being maintained or followed, or if that falls  
23 under the requirements of this Commission to be able to  
24 do. So, those are my recommendations and my question.

25           CHAIRPERSON CLEMENT: If you wouldn't mind

1 everyone, I would like to address that second comment, and  
2 I do believe, Mr. Johnson, if you would respond, please.

3 MR. JOHNSON: Yes, we do maintain a file of all  
4 the information that's distributed for each meeting, and  
5 it is available upon request. Just give me a call and I  
6 will be happy to let you look at it. Not a problem.

7 CHAIRPERSON CLEMENT: Thank you. Thank you. And  
8 then on the first, we may want to consider that, be happy  
9 to get any input on what DEQ thought about setting up an  
10 account like that. You don't have to respond unless you  
11 are prepared to do that today.

12 MS. HUDDLESTON: Well, anything like that would  
13 not be part of the procedures at this time?

14 CHAIRPERSON CLEMENT: Right. Exactly. And I  
15 think we should place that on the next agenda and then  
16 provide DEQ an opportunity to research whether they want  
17 to do that or whether that would be helpful then we can  
18 all -- is that -- would that be a way to handle that?

19 Okay. Thank you. That was -- for the record,  
20 that was a excellent and lucid presentation. I think  
21 we're all grateful we had it.

22 Let me find my agenda here.

23 The next agenda item is the ADEQ updates and the  
24 first update is the program update by Mr. McNeely.

25 MR. MC NEELY: Thank you, Madam Chair. UST

1 program update. It's the same update I've been giving  
2 pretty much every month. We have been working on our  
3 database and spending a lot of time on our database. It's  
4 supposed to be up and running June 20th, and we're still  
5 on track for late June, new database, so we will see how  
6 that works.

7 Personnel issues. We've had two Hydro IIIs that  
8 have resigned in the last couple of weeks. One had a baby  
9 and is not going to come back, and another one is going to  
10 a consultant company, so we are still hiring. We still  
11 have probably four Hydro III vacancies that we're looking  
12 for, and if anyone's out there that is looking for a job  
13 or you know anybody, send their resumes in to me or Joe,  
14 because we are looking, and we have the authority to hire  
15 and we have the money to hire. That's really one of your  
16 biggest issues to deal with right now is lack of  
17 resources. The database is taking a lot of time, the  
18 rules take a lot of time, and we just don't have a lot of  
19 staff.

20 CHAIRPERSON CLEMENT: Mr. McNeely, on the  
21 database, what's your schedule in terms of completion  
22 where you feel like it will be usable by the agency?

23 MR. MC NEELY: We're thinking shortly after June  
24 20th it will be in use. We already have it designed. We  
25 have the code written now. Right now we're doing user

1 testing. The big issue is to migrate the old data into  
2 the new database. Old data, a lot of it is not  
3 necessarily clean data, so that's going to be probably the  
4 biggest challenge right now, the migration.

5           Once we get in there, the reporting -- right now  
6 we might look for something new, like how many days it  
7 takes to review this, how many reports we have. It's just  
8 a major challenge to get this information. So this new  
9 database will be very quick. It's been designed with our  
10 statute, the way we do business, so it's going to be much  
11 quicker. Anybody on the computer will be able to figure  
12 out how many reports are in, where they are, so I think in  
13 terms of efficiency, we will be a lot more efficient in  
14 getting things reviewed. Hopefully we won't lose things.  
15 Right now it's a very old database, and when you're  
16 dealing with 8,000 releases and 2,000 open sites and 7,000  
17 tanks, you need a good database because you can't keep  
18 track of all of that.

19           CHAIRPERSON CLEMENT: Thank you.

20           MR. MC NEELY: You are welcome. I will just keep  
21 on going right into the SAF Rule update.

22           Last meeting, our intention was to have this to  
23 the Secretary of State by late March. We still have not  
24 committed it to the Secretary of State. We are working on  
25 the preamble, and the preamble includes an economic impact

1 statement, so we are hoping -- we are getting very close.  
2 We're hoping before next Policy Commission meeting we will  
3 have that submitted to the Secretary of State to publish.  
4 Once you submit it to them, it takes two or three weeks to  
5 get it published, so we're looking probably June time  
6 frame before it's actually published. Then there will be  
7 30-day public comment period, which pushes it up into July  
8 time frame at the earliest, so this rule will not be in  
9 place. Best case scenario is we're talking about early  
10 fall right now.

11 MS. MARTINCIC: Is it after the eligibility  
12 cut-off date?

13 MR. MC NEELY: Eligibility is a year from --

14 MS. MARTINCIC: Right. I hear you saying fall of  
15 2005 of this year?

16 MR. MC NEELY: Yes. Once you get to public -- to  
17 the Secretary of State and public comment, then you are  
18 within 90 days, 120 days, unless there is major issues  
19 with it.

20 Well, that's it for the SAF Rule update. And  
21 Joe's next, but I just want to let you know, if you look  
22 at your packet, we don't have a lot of numbers for the UST  
23 Corrective Action Plan. One reason for that is we're  
24 trying to upscale, update our database. As we are running  
25 new queries, we are getting new numbers, and I didn't want

1 to report numbers that may be wrong. It may be changed  
2 next week when I run another query. So, I don't think  
3 there is a major issue with backlog reports because no one  
4 is calling me and complaining about it, and I think we're  
5 being pretty proactive in terms of getting the reports out  
6 the door. Joe is tracking what comes and goes, but giving  
7 you a number, I was uneasy about giving you a number that  
8 I'm not very confident with. In June or July when we get  
9 the database, we should have pretty solid numbers.

10 CHAIRPERSON CLEMENT: Mr. Gill?

11 MR. GILL: Phil, what is the -- in regard to the  
12 SAF Rule, what's the status of the cost schedule?

13 MR. MC NEELY: I think Judy's going to talk about  
14 that. One thing we decided not to do is to -- we were  
15 trying to do too much at the same time, the database, the  
16 SAF Rule, and I'm working, plus the cost schedule, it's  
17 overwhelming. So I didn't want to -- there was no way I  
18 was going to make having a new cost schedule with new  
19 costs by July 1st. There is no way we are going to make  
20 that. So what we are trying to do is use the current cost  
21 schedule for July 1st, and Judy will talk about this. We  
22 are redoing application -- and she will talk about it.

23 We are just redoing -- making it in a format.  
24 When we do new cost schedules, it will be in the right  
25 format. We may change the costs down the road, so it

1 should be pretty painless in July 1st because we're going  
2 to use the same costs, the same cost schedule, different  
3 application form.

4 CHAIRPERSON CLEMENT: Thank you.

5 We will move on to Mr. Drosendahl.

6 MR. DROSENDAHL: Yes. My name is Joe Drosendahl,  
7 Corrective Action Section Manager.

8 Like Phil said, we don't have any numbers to show  
9 you right today, but me and my unit managers, we're trying  
10 to increase our productivity even more. We're just trying  
11 to try everything we can to squeeze a few more reviews  
12 here and there. So we're -- hopefully we'll get even  
13 better.

14 I'm continuing to improve the communication with  
15 the stakeholders, and I've been getting feedback that that  
16 seems to be working. Definitely let me know if it's not  
17 or if you have an issue. We're definitely having facility  
18 meetings when requested to try to increase communication,  
19 and that seems to be working real good.

20 We're working on the Route 66 Initiative, and  
21 we're about ready to assign some case managers to deal  
22 with the rest of Route 66, so hopefully that will be  
23 totally assigned, and down the road we'll get that done.

24 We're still implementing the Municipal Tank  
25 Closure program, and that seems to be doing fine. We're

1 still getting applications from cities, so that's moving  
2 forward.

3           Basically the next one is mine, too, with the  
4 risk assessment, the Tier 2 software. The contractor has  
5 submitted what they consider the final version of the  
6 software. They've submitted the manual that goes with it.  
7 We're currently looking at the software internally to give  
8 our final approval.

9           Later on this week, me and Jeanene are going to  
10 be meeting with Phil to run through it and hopefully we  
11 can totally finalize it and get it up on the web or at  
12 least make physical copies of it. After it's finalized,  
13 we're going to be, you know, training internal staff to  
14 use it and we will probably have some external training  
15 also.

16           CHAIRPERSON CLEMENT: I just thought I would  
17 compliment you. That's been such a long time coming, and  
18 to actually see that it may be, you know, the light at the  
19 end of the tunnel.

20           I know you are very short-staffed, and I know you  
21 are doing a lot with resources you have. I'm very sorry  
22 to hear you've lost additional people, but from what I've  
23 heard from the regulated community, they are really  
24 pleased to work issues out ahead of time before they  
25 become major problems.

1 MS. MARTINCIC: I would ask, too, if you are  
2 going to do external training, if you could let us know  
3 when that would be, I would like to get the word out to my  
4 membership about that.

5 MR. DROSENDAHL: That I will.

6 CHAIRPERSON CLEMENT: If you would let the whole  
7 Commission --

8 MS. MARTINCIC: Maybe like a month before if you  
9 can pinpoint it.

10 CHAIRPERSON CLEMENT: Ms. Foster.

11 MS. FOSTER: Joe, how many risk assessments have  
12 been approved in 2005?

13 MR. DROSENDAHL: 2005, not many. I don't have  
14 the numbers right now, but I'm not really sure.

15 MS. FOSTER: And how are you handling the  
16 backlog, the older ones?

17 MR. DROSENDAHL: Yeah. Right now Jeanene's time  
18 has, you know, basically been definitely, you know,  
19 dictated where, you know, she's getting the Tier 2  
20 software out. She's also involved with the Soil Rules, so  
21 those are her two main functions now.

22 We do have a contractor with the State of Arizona  
23 that helps the voluntary program with risk assessments.  
24 We're looking at getting the backlog of UST risk  
25 assessments to the contractor to finish up.

1 MS. FOSTER: Do you know what your oldest one is?

2 MR. DROSENDAHL: No, I do not.

3 MS. FOSTER: Well, it's five years.

4 MR. DROSENDAHL: Five years? I take it it's a  
5 City of Phoenix one?

6 MS FOSTER: Uh-huh.

7 MR. DROSENDAHL: Okay.

8 CHAIRPERSON CLEMENT: Is there any way -- I  
9 really haven't been in that role. Is there any -- knowing  
10 that you are short-staffed and limited on your resources,  
11 is there any way we can assist you as a commission, you  
12 know, to get certain components of this program in place  
13 or a certain backlog caught up?

14 MR. DROSENDAHL: No. I think with the contractor  
15 and everything, and with the Tier 2, you know, the  
16 development of the Tier 2 coming to a close, I think that  
17 will do it.

18 CHAIRPERSON CLEMENT: Thank you. Any other  
19 comments or questions?

20 Thank you, Mr. Drosendahl.

21 And then we will go to a State Assurance Fund  
22 monthly update.

23 MS. NAVARRETE: Hopefully you got your packets  
24 last month.

25 As far as March and April, we had four hydros,

1 so I didn't have a full staff, but almost, but I've lost  
2 one of them. His last day is today, so we will be back  
3 down to three reviewers.

4           Last month we got -- let me put my glasses back  
5 on -- 79 in and 52 out, which total in-house is 401. And  
6 as you can see, we have 141 that were over 90 days. We  
7 are getting through most of those this month, April, so  
8 what I had to do is I'd assign someone to find everything  
9 that was going into the 90-day overage or more, and we  
10 have signs in those applications, and we are doing the  
11 first in/first out, so that -- which we were doing, but  
12 sometimes, you know, things get here or there, and so it  
13 wasn't -- it's hard to track first in and first out, but  
14 that's what we're doing. And we're putting signs in them  
15 so that we make sure that those that are appealed get  
16 reviewed first. And that's how we're trying to handle  
17 that problem. Until I can get some more hydros hired, we  
18 are going to stay a little bit behind. But everybody is  
19 working really, really hard doing all the extra things,  
20 like the database, the rules and cost ceilings, and  
21 everything else. So --

22           And the second -- and you can see from the  
23 appeals we did have one that went to a TAP in March. It  
24 was decided in favor of ADEQ. And the same in February.  
25 We had one that went to a TAP, and the decision was in

1 DEQ's favor.

2           And to speak a little bit on the cost ceilings,  
3 there will probably be -- there may be a couple of minor  
4 tweeks, but most everything is going to stay the same.  
5 And also, we will be having new applications, which should  
6 make it a lot simpler for you to turn in applications, and  
7 we will have one for pre-approval, one for direct pays and  
8 one for reimbursement, and so they will all be on a  
9 different thing. And we're going to put those on the web  
10 so that they can be downloaded.

11           And also the worksheets, we have new worksheets  
12 and they will be on the web also so they can be  
13 downloaded.

14           And I'm planning two training sessions, and I  
15 know it's a little late in the year, but this is the first  
16 time I could get this room. It's June 16th from nine to  
17 twelve in the morning, and June 23rd from one to four in  
18 the afternoon. We will be presenting the new applications  
19 and the worksheets and how to fill everything out.

20           I think they're pretty self-explanatory, but we  
21 will also have an instruction page with the applications.  
22 But hopefully I might be able to get them on the web even  
23 before we have the training and you guys can take a look  
24 at them and if you see something significant that needs to  
25 be changed, you know, that might be doable. So,

1 hopefully, I can get them out there on the web beforehand,  
2 but, you know, they have to go through the process.  
3 Everybody has to look at them, and we have to have all the  
4 approvals before we can put them out there, so we will  
5 see. We will do the best we can.

6 CHAIRPERSON CLEMENT: Ms. Foster?

7 MS. FOSTER: Question. Electronic applications  
8 are wonderful. Can we submit them back to you  
9 electronically?

10 MS. NAVARRETE: No, because --

11 MS. FOSTER: Why not?

12 MS. NAVARRETE: Because we still have to put them  
13 into the database.

14 MS. FOSTER: To help with reducing errors,  
15 wouldn't it be in DEQ's best interest to have some sort of  
16 transfer of that information electronically straight to a  
17 database?

18 MS. NAVARRETE: Oh, it would, Theresa. We're  
19 just not set up like that yet. That's a future  
20 enhancement, and I was told that that can't be done. We  
21 had got to \$500,000 from the legislature. We had to build  
22 this database and it had to go on line before July 1st, so  
23 what they were able to do in that time didn't include this  
24 enhancement. But, believe me, I want it, too. It would  
25 save a lot of data entry for everybody. Hopefully in the

1 future.

2 MS. FOSTER: After the sunset?

3 CHAIRPERSON CLEMENT: Mr. McNeely?

4 MR. MC NEELY: That was our intention, and it  
5 still is our intention, but it's going to be a couple of  
6 years coming, probably two years down the road still.  
7 Water quality has that for some of their --

8 MS. NAVARRETE: Permits.

9 MR. MC NEELY: -- permits. I don't think they  
10 are as complex as what we are doing, but we're just not  
11 there yet.

12 CHAIRPERSON CLEMENT: Thank you. Any further  
13 questions, comments?

14 Okay. Oh, everybody should have received in  
15 their packet a copy of the letter that I received from  
16 Director Steven Ormes, and it is ADEQ's formal request to  
17 have the Policy Commission review financial responsibility  
18 requirements and insurance issues particularly as it  
19 relates to the phaseout of the SAF. And we can talk about  
20 how to best respond to that. We were already in the  
21 process, or I should say the Financial Subcommittee was  
22 already in the process of looking at insurance, and they  
23 are continuing to do that.

24 It would be my suggestion that we allow that  
25 subcommittee to work on this issue and that we participate

1 in that subcommittee, and then once that subcommittee has,  
2 you know, gotten some material that would be useful, bring  
3 it back to the Policy Commission. I think we're much more  
4 productive for those kinds of issues in a smaller, you  
5 know, more hands-on type of forum.

6 MR. O'HARA: Madam Chair, I would suggest that we  
7 probably give some guidance to our subcommittee in terms  
8 of timing. Given that the sunset comes in effect next  
9 year, if there are going to be recommendations that are  
10 going to alleviate this potential problem of preexisting  
11 conditions, you probably want it available for  
12 legislation, I would guess, by December, January time  
13 frame or recommendation?

14 MS. MARTINCIC: It would have to be if it's  
15 legislative recourse.

16 MR. O'HARA: It would almost have to be.

17 MS. MARTINCIC: If it's legislative recourse,  
18 that's not the only recourse.

19 MR. O'HARA: I'm just suggesting that if you want  
20 suggestions, that when legislation comes out we try to  
21 gear up and have something in by November.

22 CHAIRPERSON CLEMENT: And, Ms. Martincic, is it  
23 -- I went to the last Financial Subcommittee meeting and I  
24 was -- I thought it was very informative, and I want to  
25 compliment you on being able to pull together some of

1 these folks from the insurance industry to provide us real  
2 information, and I know you are going to go through that  
3 in a minute. But is it possible, do you think, because  
4 you are a lot closer to this than any of us, to get our  
5 arms around this in that amount of time, and if a  
6 legislative action would be necessary, would we be able to  
7 make a recommendation?

8 MS. MARTINCIC: I think if it comes to this body  
9 wanting to make a legislative recommendation on this  
10 issue, we would have to have it decided by November and  
11 probably before, if we could, as soon as possible because  
12 that's going to be a huge, huge undertaking. I mean,  
13 anybody who was involved with last year's legislation, I  
14 mean, that's going to be a huge challenge to go down there  
15 and explain to the legislatures that we need to continue  
16 the SAF.

17 CHAIRPERSON CLEMENT: Or some other mechanism.

18 MS. MARTINCIC: Or some other mechanism, similar  
19 mechanism, but I'm saying that outright. But I agree, if  
20 that is the recourse or the recommendation, we would need  
21 to have that quickly, and I think it can be done, yeah, so  
22 we can say November is the drop-dead date to have a  
23 recommendation back to the Policy Commission, hopefully,  
24 or sooner.

25 CHAIRPERSON CLEMENT: And I would recommend

1 everybody to participate, because I certainly don't have a  
2 lot of personal knowledge about this issue, and I was very  
3 well educated in the last subcommittee.

4 MS. MARTINCIC: I personally would like to have  
5 it more closer to June. That's going to be pushing it,  
6 but, you know, I think that makes sense.

7 CHAIRPERSON CLEMENT: Whatever, I think --

8 MS. MARTINCIC: Basically, the drop-dead date  
9 would be November, right, but if we could move it up any  
10 quicker than that, that would be great.

11 CHAIRPERSON CLEMENT: And this really rolls right  
12 into --

13 Any other questions on that?

14 This rolls right into the Financial Subcommittee  
15 update.

16 MS. MARTINCIC: So, basically we had -- the  
17 Financial Subcommittee met a lot in 2004 before the  
18 legislation, which, you know, ended eligibility and phased  
19 it out. But it came to our attention I think in February  
20 of this year that there was an owner/operator who was  
21 having difficulty getting insurance to meet the federal  
22 financial responsibility requirement, so the Financial  
23 Subcommittee meeting was held on March 3rd, and then we  
24 had a meeting on April 7th as well, and we will be having  
25 one in May again, which was changed to, I believe, May

1 23rd, I think is the date. I think it's on here. I'm  
2 pretty sure it's May 23rd.

3 So basically I kind of -- we didn't have a  
4 meeting last month, so I thought it would be helpful for  
5 folks to kind of give an overview of what was discussed at  
6 both Financial Subcommittee meetings.

7 In our March meeting we learned from ADEQ that  
8 they had sent out some cards asking owner/operators to, I  
9 guess, certify or verify with them that they had federal  
10 financial responsibility requirements met, and I'm not  
11 sure if that requested them to actually send in their  
12 insurance policies. Maybe someone can clarify from ADEQ.  
13 I never saw the post card myself, but we talked about it  
14 in the meeting. Ron?

15 CHAIRPERSON CLEMENT: Mr. Kern.

16 MR. KERN: Ron Kern, DEQ. And I believe what you  
17 are alluding to, Andrea, is the site status letters that  
18 we sent out. I think it was about the October 2003 time  
19 frame, something like that.

20 MS. MARTINCIC: It was actually sent out last  
21 year. I thought these were sent out the beginning of the  
22 year.

23 MR. MC NEELY: October 2003.

24 MR. KERN: October 2003, yeah, they were sent  
25 out, at least 450 site status letters that we sent out to

1 owners and/or operators whom we did not recognize as being  
2 in compliance with the financial responsibility  
3 requirements, just telling them we don't recognize your  
4 compliance with this. Please provide us with the  
5 documentation or show us how you are in compliance with  
6 the FR requirements.

7 MS. MARTINCIC: Were they open-ended in the  
8 letter, then? Because it's interesting that -- like this  
9 is two years later.

10 MR. KERN: I don't understand your question.  
11 Basically we are telling them we don't have that. We gave  
12 them kind of a time frame, and it may have been 60 days or  
13 something like, for providing us with that documentation  
14 that they are in compliance.

15 MS. MARTINCIC: I guess if you e-mailed the  
16 letters in October of 2003 and someone was hearing about  
17 this in March of 2005, it seems like --

18 MR. KERN: We've done several efforts since then.

19 MS. MARTINCIC: You sent these letters again?

20 MR. KERN: We have sent out continuous letters.  
21 It was that first effort in October 2003, but as part of  
22 our agency's Compliance Enforcement Handbook, and since  
23 this is a compliance issue, the first step in that is a  
24 site status letter, and then it goes up the formal  
25 enforcement chain from there.

1           MS. MARTINCIC: So basically we have heard that  
2 these had gone out and it came to the subcommittee's  
3 attention that one of the owner/operators was unable to  
4 get insurance and was being told by the insurance carriers  
5 that it was due to preexisting conditions, and so the  
6 Financial Subcommittee was asked to look into this, try to  
7 talk to insurance carriers, try to find out how they're  
8 viewing the SAF phase-out, how they're writing policies,  
9 what they are excluding, the usual issues.

10           So, after that first initial March meeting, I was  
11 asked to try to get carriers to come in in April, and we  
12 lined up a new -- well, they're not new to this industry,  
13 but they're Colony Insurance, and they were kind enough to  
14 come in and give a presentation for the Financial  
15 Subcommittee and kind of talked about in general terms  
16 sort of the issues that they have in writing policies.  
17 They are not writing currently much in Arizona. I think  
18 they may only have a couple actual sites that they're  
19 writing for, but it still was interesting and I think  
20 beneficial to hear from them about what they take into  
21 consideration with writing policies.

22           One thing that they brought up that they see as a  
23 concern is if ADEQ can reopen closed sites, and they see  
24 that as a potential issue as a carrier. Other things that  
25 were discussed were soil testing, whether carriers, you

1 know, should require soil testing or do they. Colony said  
2 they do not. They didn't think that other carriers  
3 required that. We discussed, you know, that that would be  
4 cost prohibitive if that was the case.

5           The main issue, then, that kind of developed  
6 after this initial discussion was that we need to find out  
7 from ADEQ the number -- the percentage of sites in Arizona  
8 which have had releases, and that will help us get a  
9 handle as the Financial Subcommittee on how many -- what's  
10 the realm of this problem of owner/operators who could  
11 potentially begin to see -- again have problems getting  
12 insurance, because we really did hear from Colony that  
13 preexisting conditions are a problem.

14           I've since met with a director for government  
15 relations for AIG nationally and heard the same thing, and  
16 I think it's kind of a universal concern for all carriers.

17           So, I would like the Policy Commission, one of my  
18 recommendations I guess today is to ask ADEQ to provide us  
19 with those numbers by the May meeting in terms of the, you  
20 know, total number of sites in Arizona that have had a  
21 release, and that should help us understand the potential  
22 impact, because right now we've only heard from the one  
23 owner/operator that couldn't get insurance, and ADEQ had  
24 been -- was asked to kind of look and see if it's becoming  
25 more of a problem. At the last meeting they said it

1 hasn't, so I guess I had heard otherwise.

2 MR. MC NEELY: We can provide it. I think what  
3 you are asking for is how many currently operating  
4 facilities that have had a formal release --

5 MS. MARTINCIC: Exactly --

6 MR. MC NEELY: -- and how many of those.

7 Typically, we've been pretty good with the  
8 financial responsibility after we got inspections. When  
9 we do our inspections, it's about 80 percent compliance  
10 with financial responsibility. After the inspection, it's  
11 up to about 90, 91 percent, so the majority of the  
12 owner/operators have financial responsibility.

13 And I do have a number and I will have to go and  
14 check it, but there is a subset of how many releases for  
15 operating. So, the nonoperating facilities with no  
16 releases shouldn't be a issue, but just the ones that have  
17 current releases, we can get that.

18 MS. MARTINCIC: And I will get into that. That  
19 would be great if you could get that for me.

20 During the meeting, one thing that came up which  
21 was frustrating for the owner/operators that were in the  
22 meeting is that in hearing the discussion that Colony  
23 brought forth, one of the things that, you know,  
24 ironically it seems as if it's easier to get insurance if  
25 you don't know your situation at your site. And, you

1 know, that just seems like poor public policy, but, I  
2 guess, you know, the two don't necessarily match. But  
3 that was one thing that folks are pretty frustrated about,  
4 because it came out that essentially as an owner/operator,  
5 if you find -- you know your site in and out, you've done  
6 your job well and you are out trying to get insurance, the  
7 carriers almost don't really like that because then they  
8 can better assess risk, I'm sure, and realize, you know,  
9 what their liabilities in the end may be, but it was just  
10 an interesting observation.

11           Since then I also met with, as I said, the  
12 gentleman, Kevin Matthews, with AIG, and he kind of went  
13 over some issues nationally that they've been seeing at  
14 AIG, and there are a number of state funds that are being  
15 phased out because the historic claims are eating up the  
16 funds. And so AIG is working with a number of states on  
17 some of those issues different than what's going on here  
18 in Arizona, but the end result of phase-out is, you know,  
19 similar in some ways.

20           One thing that he said to me that I thought was  
21 frustrating as well was that just because a tank is in  
22 regulatory compliance does not mean it's insurable. And  
23 he said it a number of times in our meeting. And so as an  
24 owner/operator and representing owner/operators, I know  
25 that's very frustrating to know that you are in regulatory

1 compliance with the state and federal regulations and yet  
2 you still may have difficulty in getting insurance. And  
3 he really stressed that in our discussion.

4           So, one of the other things he mentioned to me is  
5 that AIG is now taking a policy nationally that they will  
6 not insure tanks that are older than 20 years, and I would  
7 imagine that could become problematic perhaps in Arizona.

8           They also won't insure prior conditions,  
9 preexisting conditions. He said that if an owner/operator  
10 comes to them and wants to write a policy on their site,  
11 and they're planning on ripping out their tanks that year  
12 or upgrading, or, you know -- and these could be positive  
13 things for the environment, they won't write the policy.

14           And he said the only exception to that would be  
15 is if it's somebody that they've had as a client for two  
16 to three years and had a relationship, but it's a site by  
17 site, you know. As a general statement, they won't write  
18 a policy if you are going to be yanking on your tanks or  
19 doing any kind of work on your site.

20           That issue alone troubled me a lot, because at  
21 the federal level in the Energy Bill right now they're  
22 pushing to the states two decisions: You either do  
23 double-wall containment, secondary containment, or you  
24 license your manufacturers and installers of the  
25 equipment, and they made it as an option for the state.

1 It's past the House. It's going over to the Senate now,  
2 and they were pushing double-wall containment last year as  
3 well.

4 I think, you know, if it becomes an issue where  
5 there is new regulations coming from the Feds, and the  
6 states then, you know, have to enforce that, and folks  
7 having to again go through this rigamarole of pulling out  
8 tanks, this could really become a huge issue with the  
9 insurance.

10 So, one thing he told me, and I found this  
11 interesting, is that from an insurance standpoint, UST  
12 pollution liability insurance is not a profit center for  
13 insurance companies. They don't really particularly like  
14 it. I was frustrated in getting responses a year ago from  
15 the carriers when we were going through the legislative  
16 process, and he said they just don't have the time to  
17 provide that kind of support usually, because the only way  
18 they make money at this is if they are out writing  
19 policies. And so for them to pull people away from their  
20 ability to be writing policies to do this other sort of  
21 stuff doesn't make financial sense for them. So -- and  
22 that's AIG, one of the largest providers of this type of  
23 insurance, so I found that to be interesting.

24 The other thing he told me is that one thing that  
25 the insurance companies are very focused on from a

1 regulatory legislative/judicial, I guess, agenda is that  
2 Zurich case, and basically the insurance companies want  
3 the ability to cancel a policy, and that's their primary  
4 objective is to be able to achieve that. You know,  
5 representing owner/operators, that's sort of scary, too,  
6 but that's what their real political agenda is for the  
7 insurance company.

8 CHAIRPERSON CLEMENT: If you cancel policies for  
9 any reason or for some type of reasons?

10 MS. MARTINCIC: Well, the Zurich case, and I  
11 brought copies of that to the folks that were at the  
12 Financial Subcommittee meeting, and I think the agency  
13 should have a copy of it, too, and maybe we can provide it  
14 to the larger Policy Commission if there is an interest,  
15 and maybe some of the attorneys on the Policy Commission  
16 can do a better job of explaining it, but it's my  
17 understanding it essentially had to do with an  
18 owner/operator in their application. The application was  
19 not fruitful, and so the insurance company was trying to  
20 get out of -- they didn't discuss their situation  
21 truthfully in their application for the insurance policy,  
22 and so the insurance company was trying to get out of  
23 having to pay for the claim, and the courts basically said  
24 no, you got to pay for the claim.

25 Is that -- I mean, is that sort of the gist of

1 it? If someone knows more about this, please feel free to  
2 interrupt me, but it was a pretty landmark decision and  
3 the insurance companies are all pretty worried, I guess,  
4 about the outcome of that.

5           So, that's kind of a little background. Try to  
6 make sure I'm not missing anything.

7           After the April meeting, I was asked to continue  
8 to try to bring in more carriers. It was also mentioned  
9 that perhaps EPA might be helpful to come in and talk  
10 about what they've seen nationally on some of these issues  
11 or a representative from ASTSWMO, which is a trade  
12 organization that represents the state administrator for  
13 insurance funds, and I was able to get a commitment from  
14 Steve Linder with EPA. He's in charge of the Underground  
15 Storage Tank program for region nine, I believe, which is  
16 our area, and I've had several discussions with him which  
17 have been interesting, and he's eager to come and kind of  
18 share with us what he's seen on a national level.

19           And I know there was a big conference, a UST  
20 conference that EPA was at in March, and I'm just looking  
21 through a little summary that I had gotten on it, you  
22 know. EPA, I think, is frustrated, too, because Congress  
23 is putting a lot on them to achieve in the UST program and  
24 yet not funding it, and so they're having a lot of  
25 challenges themselves with this area.

1           So, that's kind of the background, and we will  
2 continue these issues. We will have EPA come in in May,  
3 and, you know, other alternatives that we've already kind  
4 of talked about in the Financial Subcommittee, and I  
5 looked back at 2004, too, and we were talking about the  
6 same thing then as well, whether there needs to be a fund  
7 for financial need. Owner/operators, if they can't  
8 insure, then insurance becomes not affordable, there is  
9 different ways you can do that. It doesn't necessarily  
10 have to be a state fund.

11           CHAIRPERSON CLEMENT: Mr. Gill.

12           MR. GILL: Andrea, the one thing that confuses  
13 me, and maybe you can clarify, or at least find out, are  
14 the insurance companies denying a policy regardless of --  
15 for sites that have preexisting releases regardless of  
16 whether an investigation is done to determine where that  
17 is?

18           MS. MARTINCIC: Part of the thing that Colony  
19 told us about this is that they said it's an  
20 administrative challenge for the insurance companies to  
21 review Phase II reports, and part of that is that they  
22 feel it creates a risk for them as an insurance company in  
23 case they review that report or the analysis improperly,  
24 that it creates more liability for them. That was their,  
25 you know, insurance answer.

1           MR. GILL: It sounds like they are talking out  
2 both sides of their face, because they have to do the  
3 exact same thing if they give a policy knowing nothing  
4 about the site, and then there is a release, then go and  
5 fight you for whether or not that was preexisting or not.

6           MS. MARTINCIC: I think that was part of the  
7 reason that this case was so scary to the insurance  
8 companies because, you know, it puts more liability on  
9 them in the sense that they need to check when they are  
10 writing a policy for someone and maybe be out there  
11 looking at the site more than what they have traditionally  
12 done.

13          MR. GILL: It seems like that would push them for  
14 an investigation because if they write a policy and know  
15 nothing about the site --

16          MS. MARTINCIC: It's like don't ask, don't tell.  
17 It gets back to the thing that an owner/operator is better  
18 off being ignorant and getting a policy than to really  
19 know what's going on, and I think the insurance companies  
20 are playing the same game, you know. It's almost like we  
21 will write, but I don't really want to know what's going  
22 on at your site.

23                 It's troubling from a public policy standpoint,  
24 and I think the agency should be appalled at some of this,  
25 but the difficulty is finding an answer, so we will keep

1 trying to see what we can do to kind of improve the  
2 situation.

3 I just want to make sure that owner/operators are  
4 able to get insurance because they do have that federal  
5 financial responsibility requirement, and that's a big  
6 deal. And, you know, if we are saying that people can't  
7 get insurance, we need to solve that for sure. Now, the  
8 issue of policies becoming more expensive as the fund is  
9 phased out, that's another reality, and there's going to  
10 be a real huge business expense for folks.

11 MR. O'HARA: It seems like there is a gap in  
12 coverage because the fund is providing coverage based upon  
13 the release report date, and then the insurance is looking  
14 at the release occurrence date, so you could have an  
15 occurrence that was prior to phase-out but wasn't  
16 reported, then you get insurance. They're both going to  
17 deny it, so if you didn't report the release, they're  
18 going to say it occurred under the fund's coverage, so  
19 there is this huge gap that the owners can be responsible  
20 for because the definitions of coverage are different  
21 based on occurrence versus report.

22 CHAIRPERSON CLEMENT: That's a key point.

23 MS. MARTINCIC: Well, one thing I've been told  
24 from insurance brokers is that an owner/operator really  
25 needs to be somewhat savvy in terms of reading their

1 policy, understanding their policy, and I don't know that  
2 a lot of owner/operators are. And I think that's an area  
3 that, you know, in my other role as APMA, I want to maybe  
4 see what I can do about that to help owner/operators  
5 better understand because, you know, a lot of times they  
6 may be going on cost and yet a policy that, you know, may  
7 look like it's a great deal from a cost perspective may  
8 really be missing some things that an untrained eye may  
9 not realize is important.

10 CHAIRPERSON CLEMENT: Mr. McNeely.

11 MR. MC NEELY: I want to comment on your comment,  
12 Mike, about gap in coverage. There really shouldn't be a  
13 gap in coverage because law requires owner/operators to  
14 have financial responsibility today and they've had that  
15 responsibility, so if everyone is complying, SAF is saying  
16 we are cutting you off, but the insurance should have  
17 covered that anyway.

18 MS. MARTINCIC: Each policy should have a  
19 retroactive date.

20 MR. MC NEELY: If you are paying your premium,  
21 they should cover it.

22 MS. MARTINCIC: A lot of the insurance companies  
23 are getting away from that because they don't want to do  
24 the retroactive date, but owner/operators really need to  
25 push for that because it's important.

1           CHAIRPERSON CLEMENT: One thing that came out in  
2 my attendance at the meeting is that this market is a very  
3 competitive market and it's a low margin market, so they  
4 do not want to get into a situation of requiring everybody  
5 to have to do site specific testing as an individual  
6 carrier because they are going to lose a market share, and  
7 I thought that was -- that was my interpretation of that  
8 analysis. I think that's pretty interesting, what a low  
9 margin it is and how competitive it is.

10           MS. MARTINCIC: It's interesting, you'd ask my  
11 members that, there are four carriers in this state.  
12 Okay. And two of them, Colony is new, and they've only  
13 had a few that they're writing in the state. ACE -- I  
14 don't know of anyone particularly that has ACE right now,  
15 so you're looking at two main carriers, AIG and Zurich.

16           So, from an owner/operator's standpoint, how is  
17 that competitive? I mean, that's the reality. I mean,  
18 the insurance companies are going to say it's competitive.  
19 I -- you know, you only got so many people in the game.  
20 You know, we should be lucky that we have AIG and Zurich.  
21 If you look at Florida, AIG is the only insurance company  
22 writing in Florida, the whole state of Florida.

23           Nationally, this is a huge -- these are huge  
24 issues nationally, and it's not unique to Arizona, but we  
25 will do our best to try to come up with something to help

1 folks here.

2           CHAIRPERSON CLEMENT: One of the comments, one of  
3 the things that we had discussed, because as my role as  
4 chairperson I have to talk to subcommittee people about  
5 things, so -- and I'm bringing it out -- was ADEQ has  
6 asked for our assistance in this, and we want to  
7 reciprocate and ask for their assistance, because some of  
8 those folks -- because of Andrea's role as APMA, she's  
9 able to access and willing to come in. Some of these  
10 folks, I think it would be helpful if we were to invite,  
11 so we need to keep this a really joint activity because we  
12 each have a role to play.

13           And I don't know about ASTSWMO, if you would want  
14 ASTSWMO at the next meeting, and that probably would be a  
15 better avenue for DEQ.

16           MS. MARTINCIC: They don't like me calling them.  
17 I get their stuff off the web site, but I've never been  
18 able to get in contact with a live person at that group.  
19 That's my other -- APMA scares them.

20           CHAIRPERSON CLEMENT: Would that be helpful, Mr.  
21 McNeely, to have ASTSWMO at the next meeting?

22           MS. MARTINCIC: You might want to do that in  
23 June, maybe. If EPA is coming in in May, there may be too  
24 much on the agenda, but, I mean, it may not be.

25           MR. MC NEELY: Yeah. I think maybe June, but

1 Steve Linder, we did talk to him. They talk to ASTSWMO  
2 all the time, so it may be duplicative.

3 MS. MARTINCIC: He may bring some other  
4 information. He did tell me, he said he would bring  
5 research that they've done across the country on these  
6 issues to give us a perspective.

7 MR. MC NEELY: In our role, just to let you know,  
8 at ADEQ, we think it's a critical issue. We don't want  
9 June 30th, 2006 to come around and then have everybody get  
10 coverage and then don't pay. That sort of defeats the  
11 purpose of having coverage if they don't pay, so we do  
12 think the Financial Subcommittee or this Committee should  
13 actually be the lead.

14 We can provide information data, contact other  
15 states, contact EPA, but I think it would be better as a  
16 lead to make recommendations to us.

17 MS. MARTINCIC: Just for the record, too, you  
18 know, this is a big issue, and don't write it off as just  
19 a business issue, because, you know, if business owners  
20 can't get insurance and if the sites aren't being cleaned  
21 up, everybody loses in that situation. And it's an  
22 environmental issue. You know, as citizens of the state,  
23 we should all be concerned. So I just encourage everyone  
24 to get involved and attend the meetings, and if you have  
25 suggestions of people we should be contacting or give

1 another perspective on some of this, I welcome it. I'm  
2 not an insurance expert in it. I don't think I ever want  
3 to be. As I said, I've doing my best, and I'm always open  
4 to suggestions on how to reach different people or get  
5 different viewpoints.

6 CHAIRPERSON CLEMENT: Any other comments or any  
7 other questions?

8 Thank you. I really want to thank you for  
9 spearheading this.

10 Our next agenda item is an update on the  
11 Technical Subcommittee with Mr. Hal Gill.

12 MR. GILL: Thank you, Madam Chair. We just have  
13 one issue on the subcommittee agenda this last -- two  
14 weeks ago, and it was basically that DEQ -- it had been  
15 reported to me that DEQ was putting a cap on remediation  
16 equipment for the purchase price, and that also there was  
17 some -- they were capping rental equipment such as  
18 interface probes and things like that. And so the meeting  
19 was to discuss the issues involved with that and basically  
20 why it isn't cost effective and the problems that that  
21 creates for basically the owner/operators, it's ultimately  
22 going to come back down to. I don't know how much you  
23 want me to go into the meeting.

24 CHAIRPERSON CLEMENT: I think I first would like  
25 to know whether this is a issue from DEQ's standpoint or a

1 site specific issue or is it a direction that you're  
2 taking that you need to perhaps follow more formal process  
3 on?

4 MR. MC NEELY: And, you know, Agenda Item 9 and  
5 10 are almost related. One thing about issues like that  
6 that come up, I need to investigate things. If there is  
7 something that is an issue, it's helpful if someone calls  
8 me and then I can talk to Judy and we can actually  
9 investigate it rather than showing up on an agenda and  
10 having it out after public forum.

11 A lot of these things, when you start looking  
12 into them, are site specific, like the CAP remediation  
13 program.

14 Some owner/operators wanted to buy remediation  
15 equipment, and the question was, can we buy it or rent it,  
16 because rental can be 3,500 to 5,000. If they want to buy  
17 it, it's actually cheaper in the long run, and we allow  
18 that, then you just don't keep renting it. You charge the  
19 rental price to the purchase price and we don't keep  
20 renting it anymore. The owner/operator owns the  
21 equipment. They can use it in other sites, which they  
22 won't bill for, so big companies that want to buy it won't  
23 bill multiple sites, can actually buy equipment and move  
24 that equipment around. And it's in the best interest to  
25 the SAF and to them, because they don't pay the 10

1 percent, there is no charge to it.

2           So, some things that come up recently where you  
3 have pre-approvals where it looks like pre-approval, they  
4 are purchasing equipment. They have a policy to purchase  
5 equipment, they have time to purchase the equipment, but  
6 then they have rental in there for years and years and  
7 years, and that was the question. Site specific is not a  
8 change in policy about capping it at a site.

9           And the next problem with this board, when you  
10 have a site specific thing that pops up and it shows up on  
11 the agenda without having time to internally figure out  
12 what's going on, it's very difficult. And that's why in  
13 general I'm not going to send staff to talk about a site  
14 specific thing until I figure out what's going on. If  
15 it's a policy change, which it won't be because you will  
16 know about it ahead of time, but then we will handle it;  
17 however, if a company, a site specific thing that I think  
18 is wrong, then I can fix it, but I don't really think  
19 that's appropriate in a public forum.

20           So, the answer to your question, no, right now  
21 there is no change of policy about capping equipment.  
22 There is -- even though I've looked into it, there is some  
23 issues on it that raise my eyebrows.

24           If you have a pre-approval work plan, for  
25 example, and the equipment costs 50,000 to buy, and they

1 want to run the system for three years, and the  
2 pre-approval work plan says I can charge \$200,000 for  
3 rental, four times the amount of the equipment cost, that  
4 raises my eyebrows, saying maybe we should think about  
5 this.

6           So, that is something I'm looking at now, like  
7 since it was brought to my attention, that is a little odd  
8 that the state would grant, even though I understand the  
9 benefit of renting, but at one site to pay that kind of  
10 money when you can buy it for 50,000.

11           So, now I'm thinking about that. I really don't  
12 have a statement to say one way or the other, but is that  
13 cost effective. Our regulation, it is cost effectiveness.  
14 Is that cost effective? I would say, off the top of my  
15 head, no, but then you go back to talking and they're all  
16 monthly rentals. You just don't say they are rentals.

17           So, those issues, if you bring them up, we look  
18 at them, and one thing about SAF, things like that happen  
19 all the time. Bring something up, see the work plan,  
20 spell it out and mail it, and in large print right in  
21 front of you, you have to look at it because that's our  
22 statutory obligation to look at their stuff.

23           Now, the purchase price for like interface  
24 probes, I'm not sure where that's coming from. We've  
25 always had a cost ceiling on that. I think we removed

1 some of that cost ceiling, so we're not limiting -- I  
2 don't know where that's coming from. I would have to have  
3 more information on that.

4 Did I answer your question, Mr. Gill.

5 MR. GILL: I had my agenda actually two weeks  
6 ahead of the meeting, and I had actually had feelers into  
7 DEQ probably a month before when I first heard about the  
8 quote/unquote cap. And my understanding is that it had  
9 nothing to do with purchasing equipment, so, once again,  
10 you know, I don't know where the fault of the problem is,  
11 but my understanding was actually rental of equipment.

12 So, if I understand what you are saying, if the  
13 owner/operator wants to buy equipment, that's fine, it  
14 makes perfect sense. And most of them have gone away from  
15 them because it's a real pain in the you-know-where. But,  
16 the information that I had was that this was a piece of  
17 rental equipment that was capped.

18 I mean, you know, I can understand you needing  
19 time to get -- find out what's going on and get the  
20 specifics of a particular issue, but I would just like,  
21 you know, to be notified, because I went forward with the  
22 meeting. Actually I had requested a month before to have  
23 SAF people there, not specifically for this issue, but we  
24 just wanted SAF people at our meetings, which I will come  
25 to.

1           But if there is not going to be anyone there for  
2 that issue, then there really would be no reason to have  
3 that meeting because that was the only reason we were  
4 there and there was nothing to discuss, because Joe could  
5 tell us, well, I think this is the problem, but we were  
6 just kind of pontificating and not going anywhere. But on  
7 to the issue --

8           CHAIRPERSON CLEMENT: Excuse me. Ms. Foster had  
9 a comment.

10           MS. FOSTER: I'm hearing conflicting stories.  
11 I'm hearing that DEQ SAF Fund will pay for the purchase of  
12 remediation equipment, but then I talk to SAF staff, for  
13 larger pieces of equipment you can only rent them.

14           MS. NAVARRETE: There has been purchases -- Judy  
15 Navarrete. There has been purchases by large companies  
16 and what they do is they purchase it and then we pay a  
17 monthly rental fee to them up to that purchase price.  
18 They provide us with the invoice.

19           MS. FOSTER: So then that company would have to  
20 put their money on the line, money in which they could be  
21 investing at a certain percentage rate, and only get  
22 reimbursed for the cost of that unit, not for the two to  
23 three years or whatever number of years that they are  
24 being paid back from the fund, so I don't see that as  
25 being real fair to the company.

1 MR. MC NEELY: I would like to comment on that.

2 CHAIRPERSON CLEMENT: Mr. McNeely.

3 MR. MC NEELY: These are owner/operators, people  
4 that are liable parties. They are not here to make money.  
5 They have to pay 10 percent of all cleanup cost. By them  
6 buying that, they don't have to have a consultant rent it.  
7 We have to pay 10 percent of that cost. It's very cost  
8 effective. If a big company, big oil company, not one or  
9 two facilities, but a big one, if they want to move that  
10 system around from site to site, it's very cost effective  
11 because they got paid for the cost of it and they don't  
12 have to pay 10 percent of a consultant renting it. That's  
13 cost effective.

14 If you are a consultant, it may not be cost  
15 effective to do that because you are in there to make  
16 business, you are not the liable party. That's where the  
17 issue is.

18 And we've had owner/operators come to us that we  
19 want to buy the equipment and we just don't write a check  
20 for \$50,000 to buy equipment. We say, you know, if you  
21 want to, you can rent it up to the equipment cost, give us  
22 the invoice, and then just don't bill us anymore. They've  
23 come to us. We didn't tell them to do that. We've done  
24 that.

25 MS. FOSTER: Why can't the owner/operator just

1 say I'm going to use this piece of equipment for the next  
2 so many years until this fund sunsets, let's just put the  
3 application in now and be paid 90 percent of the money  
4 rather than get into the hassle of how much has been  
5 applied to one invoice and more SAF applications have to  
6 be submitted for that rental bill?

7 MS. MARTINCIC: Anyways, that would also help our  
8 operators who aren't major oil companies. I mean, if it's  
9 cost -- you know, who's to say it's not cost effective for  
10 a mid-size owner/operator to do that.

11 MR. MC NEELY: We are working very well with  
12 these people. The only one that ever asks us -- I mean,  
13 if you have a question, you should -- this is getting site  
14 specific now, too, but --

15 MS. FOSTER: The questions have been asked and  
16 the answer from DEQ has been sent it.

17 MR. GILL: Raise it up the chain of command.  
18 That's what we're here for.

19 CHAIRPERSON CLEMENT: Ms. Navarrete, you had  
20 another comment.

21 MS. NAVARRETE: This evidently -- not evidently.  
22 This was worked out long before I got to the fund. I  
23 didn't know we bought equipment, and I was surprised when  
24 I found out a year or so ago that large corporations have  
25 purchased equipment, major oil, given us an invoice, and

1 it was agreed that we would pay up -- the rental fee up to  
2 that invoice. Now, that has been a longstanding program,  
3 something that I didn't negotiate.

4 CHAIRPERSON CLEMENT: Mr. Findley.

5 MR. FINDLEY: Being in the Technical Committee  
6 meeting, one of the things that seemed to be questioned  
7 was that the company that is renting this equipment, you  
8 know, submits that periodically, I assume, and that as  
9 soon as their rentals total whatever DEQ thinks is the  
10 cost of the equipment, then their rental payments, their  
11 submittal of rental is denied.

12 MS. NAVARRETE: No.

13 MR. FINDLEY: And they were complaining that that  
14 didn't include their insurance, the maintenance, the  
15 replacement of parts. If it's an arbitrary figure, well,  
16 you've reached the cost of buying the equipment,  
17 therefore, we're not going to reimburse rentals anymore.

18 MS. NAVARRETE: If you bought the equipment.

19 MR. FINDLEY: No. These are people that -- small  
20 operators that have no interest in buying a piece of  
21 equipment. They want to rent it when it's being used, but  
22 suddenly their rental requests, you know, payment are  
23 being denied.

24 MR. MC NEELY: That's fine.

25 MR. FINDLEY: But suddenly their rental requests,

1 you know, payment are being denied because they are topped  
2 out at a theoretical cost of equipment.

3 MR. MC NEELY: Are you talking about something  
4 site specific, because we don't do that. We don't do  
5 that. You have rental. You can rent monthly rental.

6 MR. FINDLEY: And there is no limit.

7 MR. MC NEELY: Now there is not.

8 MS. NAVARRETE: If you have a specific case, give  
9 it to me and I will investigate it.

10 MR. FINDLEY: But I thought we just said that  
11 there was a limit on the rental.

12 MR. MC NEELY: No. Only when the company wants  
13 to buy it. If the company requests to buy the equipment,  
14 we look to see if it's cost effective for them to buy it.  
15 If they're only going to rent it for four months, it's  
16 cheaper to rent it, so if they are going to use this  
17 system for a long time and they request -- this is before  
18 Judy and before we -- in writing, they requested to buy  
19 the equipment, we said okay, you can rent it on a monthly  
20 rental up to -- I mean, we can bill it monthly up to the  
21 purchase price and then stop, but that was at their  
22 request. This is not a policy. We are not forcing small  
23 guys to buy equipment. We have rental, rental rates.

24 CHAIRPERSON CLEMENT: Ms. Campbell.

25 MS. CAMPBELL: I think the confusion is that DEQ

1 is not paying for anybody to buy equipment. What they are  
2 doing is they're saying to companies who are saying, we  
3 don't want to rent a piece of equipment, we want to buy  
4 it, and they are saying, okay, fine, we will pay you fair,  
5 we will pay you what you would have paid in rental for  
6 that piece of equipment that you purchased, but only up to  
7 your purchase price.

8 Now, if that owner/operator's piece of equipment  
9 breaks down or they sell it and then they want to rent  
10 more on another site, is DEQ going to pay them for rental?  
11 Probably.

12 The problem with what Ms. Foster raised, if DEQ  
13 all of a sudden is paying for equipment, what's to keep  
14 the owner/operator from turning around next month and  
15 selling it. Nothing. So now the government now -- now  
16 you put DEQ in charge of keeping track of who owns  
17 equipment, and are they using it on their other sites, and  
18 that would be, quite honestly, in my opinion --

19 MS. MARTINCIC: There can be companies doing it  
20 right now for all we know.

21 MR. MC NEELY: What if they are not billing?

22 CHAIRPERSON CLEMENT: If they are not billing and  
23 all DEQ is paying out is the total price of the cost, I  
24 don't see an issue with them being gouged or anything.  
25 You know what I mean? It's a question that Mr. Findley

1 brought up that I think is the reverse of that, and what I  
2 heard today is that is not the direction the DEQ has taken  
3 and that's not what they're doing.

4           And if there are site specific cases, then we  
5 need to make sure that they're raised to the appropriate  
6 management level at DEQ. Now, I don't know how much  
7 broader this issue is. We have a couple -- I have a  
8 speaker slip here. Ms. Foster?

9           MS. FOSTER: Historically, since I've been around  
10 a long time, DEQ has purchased pieces of equipment and  
11 paid the owner/operator 90 percent at the time the  
12 application was submitted. DEQ has also been contacted in  
13 the past when that piece of equipment is no longer usable  
14 if they wanted it back. The answer at that point in time  
15 is no, so it was surplus.

16           CHAIRPERSON CLEMENT: So, just so I'm clear --  
17 this is very complicated. So I am clear, DEQ became the  
18 owner of the equipment, not the consultant or not the  
19 owner and operator?

20           MS. FOSTER: The owner was never -- it's fuzzy.  
21 We don't really know who owns it, but DEQ has purchased at  
22 90 percent money when the SAF applications were submitted  
23 historically.

24           CHAIRPERSON CLEMENT: But not as a rental up to a  
25 specific cost?

1 MS. FOSTER: In certain situations, no.

2 CHAIRPERSON CLEMENT: That may have been historic  
3 background. Mr. Gill?

4 MR. GILL: Madam Chair, that's really a  
5 completely different issue. And I will look into it  
6 further and find out if the individuals can, you know --  
7 if they can get it clarified, but my understanding is that  
8 they were -- DEQ was putting a cap on rental equipment,  
9 and which is just exactly the opposite.

10 So, I will make sure that's clarified and see if  
11 they can bring those specific issues, take them further  
12 up, because that's what brought the first -- brought the  
13 discussion to begin with.

14 So, if you want to go to the next, I have some  
15 more.

16 CHAIRPERSON CLEMENT: Any other discussion on the  
17 Technical Subcommittee? Any other questions, comments?

18 Okay. We will move on to ADEQ Attendance and  
19 Topics at Subcommittee Meetings.

20 MR. GILL: I thought you were going to the  
21 speakers because I did want to finish.

22 CHAIRPERSON CLEMENT: I'm sorry, did you want to  
23 take this now?

24 MR. GILL: I can. Well, let me finish the one  
25 last -- one last point that I had is, during the Technical

1 Subcommittee -- I had requested -- this was a month ago  
2 for the last meeting, I had requested that -- myself and  
3 other people in the meetings requested, you know, could  
4 SAF have an individual available at the meeting, because  
5 basically everything, regardless of whether it's a  
6 Technical Subcommittee, everything we discuss, I mean,  
7 99.99 percent of the time when we're through with our  
8 discussion, I also have to ask Joe, can you please pass  
9 this on to SAF.

10           Everything in this program has an SAF component.  
11 We can't get around it. And all of our discussions of  
12 technical activities, the way we do things, just  
13 activities in the field, all of our technical language  
14 that we come up with in the -- that we put on the  
15 bulletin, it all goes towards clarifying the work that's  
16 being done so there is no conflict with SAF.

17           That's basically what we're doing every time.  
18 So we really need someone at these meetings from SAF to  
19 hear these discussions and to raise any questions,  
20 concerns that they have from their perspective, because  
21 that's really where it's all going. And so that's why I  
22 had asked that someone be available at these meetings, and  
23 that's why I'm asking as the Policy Commission as well  
24 that we really need someone from SAF as well as UST at  
25 these meetings and hear the discussions and we're not

1 embroiled in appeals and on and on.

2 CHAIRPERSON CLEMENT: Ms. Navarrete?

3 MS. NAVARRETE: Judy Navarrete. I need to send a  
4 technical person, and I did not have a technical person to  
5 send to your -- because we were embroiled in appeals that  
6 day.

7 CHAIRPERSON CLEMENT: Mr. McNeely?

8 MR. MC NEELY: You know, it's a resource issue.  
9 Our people are very, very, very busy, and if we don't  
10 really know what the topic is, I don't want these  
11 subcommittees to turn into where my people are being  
12 attacked or all these -- these discussions we just had  
13 right now, I don't want a staff person or even a unit  
14 manager having to have these discussions, because I would  
15 much rather have exactly what the issue is, what the site  
16 is, who said it, and I will investigate it, then I can  
17 maybe brief with Judy, and we can send somebody to explain  
18 something. But I don't ever get the information that I  
19 need to actually make a presentation and tell you what  
20 we're doing.

21 It's always "I heard" or "I think". Give me the  
22 facts, specifics, e-mail it to me and I'll investigate it  
23 and we can work together when you want it on the agenda,  
24 but otherwise we're busy, very busy, and it's just not  
25 good to have -- then they will say something I may not

1 agree with, actually, too, because I like to have internal  
2 discussions where we're going.

3           So, that's the issue internally, Hal. And I want  
4 to support the subcommittee, but at the same time, to set  
5 people up to say things that may not be supported by their  
6 upper management or me if we don't have all the  
7 information.

8           CHAIRPERSON CLEMENT: I think that maybe one  
9 thing that we need as far as the way we conduct business  
10 is, Mr. McNeely is the director of the SAF program, and I  
11 think as a Commission, that's the level that we have to  
12 approach on a new topic, a new issue or a request. And  
13 then he can delegate from there.

14           But I concur with Mr. McNeely that he has to be  
15 aware of it. But, on the other hand, from participating  
16 in the Technical Subcommittee, having a body from the SAF  
17 there who understands -- not that you have to comment back  
18 because often the UST side of the program can't  
19 immediately comment back either, but just so that you have  
20 a full understanding of the discussion, the issues, and  
21 somebody that has enough knowledge technically to  
22 interpret that and bring it back home, I think that would  
23 help things on that level.

24           I know you are short-staffed. I know you have to  
25 do -- you know, establish your priorities. Certainly on a

1 day that you have appeals, it's a very difficult thing to  
2 staff, but I just think I would like you to consider in  
3 the future having a technical person from the SAF or  
4 administrative assistant from SAF who has technical  
5 knowledge, because we do really end up almost at every  
6 meeting hearing, SAF needs to know this, what's their  
7 position, that kind of a thing. And you don't have to  
8 immediately respond, because you can take it back if  
9 something comes up in the discussion.

10 MS. MARTINCIC: As a financial chair, I guess, as  
11 the chairperson, I'd like to know from ADEQ if there is a  
12 issue, but if you need to get our agendas by a certain  
13 time so we know whether you are going to be participating  
14 or not. I mean, I can understand Hal's frustration. He's  
15 busy too, and, you know, we're all busy, and, you know,  
16 for us to drive downtown, have a meeting, and then  
17 essentially not have a meeting because the people we think  
18 who are going to be there are not there, I guess maybe we  
19 need to set up some guidelines and criteria so that, you  
20 know, that we as subcommittee chairs get an agenda to the  
21 agency, and you see something on that agenda that, for  
22 whatever reason, you are not willing to talk about, then  
23 you get back to us well in advance so we know ahead of  
24 time. Because I would be real frustrated if I drove an  
25 hour into downtown for a meeting and then -- I've had that

1 happen once with Financial Subcommittee, but it wasn't  
2 ADEQ's fault. We didn't have anybody show up at the  
3 meeting so we just cancelled it, so I know that happens,  
4 but I guess if there is a certain time frame that you guys  
5 need to see it first, or something, maybe that would help.

6 MR. MC NEELY: Okay.

7 CHAIRPERSON CLEMENT: Ms. Navarrete?

8 MS. NAVARRETE: I believe I did send an e-mail to  
9 Hal a couple of days before the meeting, he and Al Johnson  
10 both, and I copied Phil on it.

11 MR. GILL: But it was cancelling your  
12 presentation on the cost schedule.

13 MS. NAVARRETE: That and the -- that I couldn't  
14 address that issue.

15 CHAIRPERSON CLEMENT: So, let's just recap.

16 Do you have a time frame that you'd like to see  
17 these subcommittee agendas? That would be my first  
18 question. Or do you want to get back with us on that?

19 MS. HUDDLESTON: May I ask a question?

20 CHAIRPERSON CLEMENT: Sure.

21 MS. HUDDLESTON: Do we think the agendas are  
22 sufficient or do we need an explanation?

23 MR. MC NEELY: That's a good question. There is  
24 open communication. If there is something I need to go  
25 and research it, figure out what they're changing in the

1 policy and look at site specific stuff, that might take  
2 some time, plus you will have to have some site specific  
3 stuff.

4           If it's just an agenda item to show up, like the  
5 insurance issue, I'm just mainly a participant, I can  
6 listen and say what we're trying to do. But if it's, you  
7 know expectations of DEQ, saying what we are doing and how  
8 we're doing it, it's an issue that I'm not really aware of  
9 it, a couple of days ahead of time is not enough time for  
10 us because they are busy. I have to go and say, can you  
11 investigate what the issue is, figure out -- we do a lot  
12 transactions, start digging through files, because we do a  
13 lot of transactions, so, that's the issue.

14           We're more than willing to support it, but I was  
15 saying, I can't really support it because I don't even  
16 know what the issue is.

17           MS. MARTINCIC: If we're looking for information  
18 from ADEQ, what is your time limit, two weeks, three  
19 weeks?

20           MR. MC NEELY: Depends on the issue.

21           MS. MARTINCIC: Can you give us a rough guide?

22           MR. MC NEELY: It can be a minute. I can show up  
23 and sit there at the meeting if you want my presence, but  
24 if you want me to address something that I have to bring  
25 up to the director or get an AG opinion, it will take

1 time.

2 MS. MARTINCIC: Now I feel like I'm talking to  
3 AIG now.

4 MR. MC NEELY: I can't give you a week.

5 MS. MARTINCIC: I mean, maybe three weeks or four  
6 weeks, that should be sufficient, I would think.

7 CHAIRPERSON CLEMENT: I have to say that I think  
8 that it depends on the issue, because some issues do take  
9 longer to research, especially if you have to get a legal  
10 opinion.

11 MS. MARTINCIC: Three weeks is enough time to say  
12 I'm not going to have an answer. It's communication.

13 MR. MC NEELY: It's communication, just call and  
14 talk about it.

15 CHAIRPERSON CLEMENT: I think we've established  
16 one thing: Phil is the lead. Phil McNeely is the lead.

17 Number 2, we will get our agendas to him and the  
18 rest of the UST team as soon as possible. We will  
19 communicate anything that we think is a major policy  
20 change that has a broad implication to Mr. McNeely at our  
21 earliest opportunity so he has an opportunity to do the  
22 necessary due diligence.

23 MS. MARTINCIC: I usually just send my agenda to  
24 Al. Should I not do that anymore? Should I now send it  
25 to Phil?

1           MR. MC NEELY: You can send it to Al. Al talks  
2 to me, but before you do the agenda, if it's a big issue,  
3 that's where we should be talking, because the agenda  
4 should be a few days ahead of time, but if it's a big  
5 issue, just let me know ahead of time and we'll address it  
6 during our next meeting or the following month.

7           CHAIRPERSON CLEMENT: I think all of this will be  
8 improved with communication. I think we got our ground  
9 rules and I think they're reasonable.

10           And any other comments? I mean, I know it was  
11 very frustrating and I want to again, you know -- Hal does  
12 a lot of work for us, and I wanted to express my  
13 appreciation for it. It is frustrating when you are on a  
14 pathway and you can't proceed, so --

15           MR. GILL: There was one speaker slip while we're  
16 still on this agenda item. Leon Vannais.

17           MR. VANNAIS: Leon Vannais with Tierra Dynamic.

18           I think my concerns have been addressed, and I  
19 think the major issue is communication. Nobody is looking  
20 into these meetings as a means to beat on SAF technical  
21 review. That's not it. I think they are frustrated  
22 because there is not an open discussion of these issues.  
23 And whether or not they're presented correctly to the  
24 public from the couple of people who may have been  
25 impacted by this, or if it's a position that some people

1 may be taking in the department that is not supported by  
2 upper management, I know I've obviously been in a lot of  
3 appeals over the years. I do not go to Phil, to you,  
4 Phil, to have resolution of that. That's not the way the  
5 statutes are set up. But we appreciate your eagerness to  
6 try to address these things up front. But you have to  
7 realize, too, there are time frames associated with all  
8 these things that we can't get away from, and they're  
9 driven by issues, when an appeal is filed, so we're  
10 looking at tens of thousands of dollars in attorneys' fees  
11 costs as a race against having management actually come  
12 down to the staff and say this is probably not a good  
13 idea, it doesn't make sense. This vertical up to a  
14 certain price, purchase price on the surface seems fairly  
15 reasonable.

16           There is a number of reasons why it will not  
17 work. For a large corporation, if you're going to  
18 purchase it, that's fine, but if your system only runs six  
19 months and you are only allowed to rent it six months, if  
20 it's a mid-size owner/operator or a small owner/operator,  
21 they've just put out \$50,000 and only recovered \$20,000  
22 for their rental equipment at that time, so, those things  
23 just need to be vented, and it's just having a person  
24 there that can come back to the State Assurance Fund  
25 management or to even talk to a technical person

1 themselves, because they may not realize that the decision  
2 they made at that time is inappropriate for a number of  
3 reasons, so it's just having a person there.

4 CHAIRPERSON CLEMENT: Just to clarify, when we  
5 talk about process, it's the Commission process. The  
6 regulated community has their own process that they must  
7 follow, and I doubt that Phil would like to get a call  
8 every time one of your case officers did something that  
9 you thought was inappropriate or wrong.

10 So, our discussion is about how the Commission  
11 will approach issues that we receive and, you know,  
12 courtesy that we're all going to have and the  
13 communication that we're all going to have just to be  
14 clear on that.

15 MR. GILL: I have one more speaker. Lisa  
16 Brautigam.

17 MS. BRAUTIGAM: I'm Lisa Brautigam. I'm with  
18 Fennemore Craig. I represent a variety and usually  
19 smaller landowners in the UST program, for those of you  
20 who don't know me.

21 I have a couple of questions and, I guess,  
22 comments on this issue that we had with the Technical  
23 Subcommittee.

24 My first is, I want to make sure that either  
25 we're clarified or not clarified on whether or not, Mr.

1 McNeely, did you actually state that it is not the policy  
2 of ADEQ to cap rental costs for equipment to the purchase  
3 price for that equipment if you're continuing to rent it?

4 That would be my first question, and maybe I  
5 should get on with my comments as well.

6 My other question is, are you going to continue  
7 investigating that issue, because it's my understanding  
8 from some of the people that I represent that that is in  
9 fact happening. And so if you could continue that  
10 investigation, or is it a dead issue right now, or do I  
11 need to reraise it would be another question for us.

12 And given what happened at the Technical  
13 Subcommittee meeting, I guess from the regulated  
14 community's standpoint, I would like to just say, what  
15 happened there really left a bad taste in a lot of  
16 people's mouth because, poor Joe, he's like the epitome of  
17 communication these days, and he's stuck with this issue  
18 as the corrective action manager, and he did his best to  
19 try to find out whether someone was going to show up  
20 because we were under the impression that someone from SAF  
21 would be there. And the answer we got was, it's not a  
22 technical issue, it's a financial issue.

23 That kind of pushed us, and that wasn't coming  
24 from Joe. I'm not trying to single him out. That kind of  
25 pushed the regulated community into, they are trying to

1 run us around. I just want you to understand, not that  
2 that is the correct conclusion, but where we are sitting  
3 and what we are seeing.

4           And I guess the last question, and I think, Madam  
5 Chairperson, you addressed it, during the appeal process,  
6 as an attorney I cannot go up the chain of command. I can  
7 only speak to your AG's, and then they usually rely on the  
8 technical people. I personally don't know how involved  
9 you are in looking at our appeals and our issues, so we  
10 are restrained by that, but that's just totally not  
11 allowed and impractical, so that type of conclusion. But  
12 I think you addressed that, that when you were talking  
13 about the process, you are talking about the Commission  
14 themselves.

15           CHAIRPERSON CLEMENT: Mr. McNeely.

16           MR. MC NEELY: In terms of the appeals, once you  
17 appeal it, you don't want to talk to me necessarily.

18           MS. BRAUTIGAM: I can't.

19           MR. MC NEELY: Yeah, you can't. But if you see  
20 something, like we are capping equipment generally, call  
21 me up. I mean, I don't want to be a site specific when we  
22 are doing it, because I don't know if you have issues, and  
23 I won't know about them unless someone tells me, and I  
24 don't think the best way to go is always to the Policy  
25 Commission, because the Policy Commission is supposed to

1 be looking at the big picture stuff.

2           If you have these little issues that don't really  
3 raise to the level of the Policy Commission, let me know  
4 that, that we're doing something goofy. I will look at  
5 it. I will ask Judy, Judy will investigate, and I will  
6 get site specific stuff, then I will get back to you.

7           So, I mean, open communication. I'm very open  
8 about what we're doing. We don't have any secrets. We're  
9 not running around doing this policy that nobody knows  
10 about. So, I'm just telling you, just communicate with  
11 me. If it's an appeal, then you have to go through the  
12 appeal process, but if it's before an appeal, talk to me.

13           Okay. Thank you.

14           CHAIRPERSON CLEMENT: Any other comments or  
15 questions on that?

16           Mr. Gill, are you complete?

17           MR. GILL: Basically what I will do is when I get  
18 questions or comments to me, I will ask them to send me  
19 the specific site information and specifically what the  
20 problem is, then I can pass that information along and you  
21 will know what to look for to investigate it, and I will  
22 try to get that to you -- well, if they notify me late, it  
23 will probably be in the next meeting, something like that.

24           CHAIRPERSON CLEMENT: Ms. Navarrete.

25           MS. NAVARRETE: One thing, though, if that's on

1 appeal, if that's a problem, though, and they're on  
2 appeal, we won't discuss it.

3 CHAIRPERSON CLEMENT: And you just need to remind  
4 us, because we won't know all the sites that are on  
5 appeal, so you'll have to be the opening for that.

6 Let's move on. I have to say I'm almost brain  
7 dead. And the next agenda item is summary of meeting  
8 action items, and, frankly, my notes aren't the best  
9 they've ever been, so let me try to recap a few of the  
10 things that I captured, and we're going to obtain  
11 information at our next meeting on the records retention  
12 policy for our Commission.

13 We are going to add an agenda item at our next  
14 meeting on a quorum, what constitutes a quorum for this  
15 Commission and for the subcommittees. We're going to  
16 discuss what constitutes a subcommittee quorum.

17 I'm sorry, that's all I captured as far as action  
18 items today.

19 Could others add to that if you have them?

20 MS. MARTINCIC: I know I had one on financial  
21 finding from ADEQ, the list of preexisting or current  
22 operating sites that have had a release.

23 CHAIRPERSON CLEMENT: Was there something on the  
24 bulletin? Are we all set on the bulletins?

25 MS. MARTINCIC: You asked for the bulletins for

1 the final report, but you have that now.

2 CHAIRPERSON CLEMENT: I don't know if it's that  
3 confusing, frankly. Everybody has -- I think everybody --  
4 did everyone get a copy of this on the break, Mr. Johnson?

5 MR. JOHNSON: I believe so.

6 CHAIRPERSON CLEMENT: This doesn't look confusing  
7 to me. Am I missing something? Because the web page --  
8 I'm sorry I'm jumping. The web page has the bulletin as a  
9 button that you just press on, and then you just get to  
10 the bulletin list.

11 MS. MARTINCIC: Some of the other state web  
12 sites, you know, have bigger font and an actual link that  
13 you click on and it takes you there.

14 CHAIRPERSON CLEMENT: I don't know that we need  
15 to proceed any further unless anyone else has an issue.

16 MS. MARTINCIC: I will let it go.

17 CHAIRPERSON CLEMENT: Other action items? DEQ is  
18 going to give us their metrics as soon as they're able to  
19 with the new system, and those are particularly important  
20 for the annual report, because I want to include -- you  
21 know, it looks good for the agency to include all the work  
22 you did in the last year, and those metrics give me that  
23 information.

24 Mr. Gill?

25 MR. GILL: One of the things that I had asked DEQ

1 if they could do, and let me know, Al, or whoever if it's  
2 difficult, is just send out a real simple e-mail just  
3 letting everyone know exactly how to find the bulletin and  
4 say, please look at the bulletin for the last years'  
5 consensus language and draft policy, or whatever.  
6 Because, if I remember, once you are at this page, it's  
7 pretty simple. I don't know how difficult it was to get  
8 to the page.

9 I just think that would be something worthwhile  
10 periodically to send out to the regulated public, saying  
11 here's where the last six months or the last years of  
12 consensus language on draft policies and stuff has been  
13 posted.

14 CHAIRPERSON CLEMENT: Ms. Martincic?

15 MS. MARTINCIC: Thanks. I don't know if any of  
16 the other commission members are interested, but I'm kind  
17 of curious to find out what ADEQ is doing on Route 66, if  
18 you guys are willing to share that or give a little  
19 presentation on that --

20 CHAIRPERSON CLEMENT: Not today.

21 MS. MARTINCIC: -- maybe now or at the next  
22 meeting. I think it might be a good thing for us to know  
23 what you are doing with that program. I hope it's working  
24 well.

25 CHAIRPERSON CLEMENT: Could we add that to the

1 next agenda?

2 MR. DROSENDAHL: We have a site on our web site  
3 on the Route 66, so whether it's easy to find, that's  
4 another thing.

5 MS. NAVARRETE: No. 2 under the bulletin.

6 CHAIRPERSON CLEMENT: As long as Phil is willing  
7 and his staff, could we add that to the next agenda? It  
8 could be very quick.

9 Let's keep moving. Okay. Next meeting dates. I  
10 don't think we necessarily need a discussion. Let's just  
11 go through them. May 25th is our next Policy Commission  
12 meeting. I think it's absolutely mandatory that we have  
13 one. I don't think that we can skip this one. Things are  
14 really starting to pile up. If there is any descent, let  
15 me know.

16 The next Technical Committee meeting is scheduled  
17 for --

18 MR. GILL: The second Wednesday of the month,  
19 always the second Wednesday of the month unless something  
20 comes up.

21 CHAIRPERSON CLEMENT: Is there a reason -- the  
22 second Wednesday of the month is May 11th, and that  
23 usually meets at nine. Is there a reason to conduct that  
24 meeting? Will we be prepared either with agenda items or  
25 --

1           MR. GILL: Well, at this point, yes, let me go  
2 ahead and see if I can get the information, the specific  
3 information on the issues that were sent to me and send  
4 that forward to Phil and see, and then, if not, I will  
5 send out an e-mail cancelling it.

6           CHAIRPERSON CLEMENT: Okay. Then the next  
7 Financial Subcommittee meeting?

8           MS. MARTINCIC: The next Financial Subcommittee  
9 meeting is May 23rd, and it looks like in Room 4001-B, and  
10 it's scheduled from nine to one. We're waiting to find  
11 out from Steve Linder from EPA on when he will be arriving  
12 and that sort of thing, so I wanted to have a large time  
13 block, so once we get the agenda set, we may start later  
14 than nine, depending on his availability, but I wanted to  
15 make sure we had the space available, not planning on a  
16 four-hour meeting.

17           CHAIRPERSON CLEMENT: The next agenda item is a  
18 discussion of agenda items for next Commission meeting.

19           Do we need any other discussion or are we all  
20 pretty clear of the next round that we're going to be  
21 looking at?

22           Okay. Then there is a general call to the  
23 public. I think I had one more comment that Mr. Vannais  
24 may want to make.

25           MR. VANNAIS: Of course, I am dealing with this

1 from a different issue with the Technical Subcommittee,  
2 and the issue is specifically with SAF cost ceilings,  
3 applications, processes, review.

4 I've been told, unfortunately, that just because  
5 the corrective action section thinks something is  
6 necessary, doesn't necessarily mean it is. I'm seeing a  
7 division between both the UST corrective action section  
8 and the technical reviewers at the SAF, which is  
9 frustrating for me because I am tasked with performing  
10 these actions, telling my clients that, yes, this is SAF  
11 reimbursable, and then going through a whole other  
12 standard of review when it comes time to get paid for this  
13 stuff.

14 I'm afraid that the department seems to be caught  
15 in this habit of setting policy and practice using the  
16 appeal process, and that's very expensive to get involved  
17 in, and it's not cost effective.

18 If any issue came up like this about setting caps  
19 for remediation, whether or not it was valid, it would be  
20 more appropriate, I think, for that issue to be brought  
21 before the public committee, if it's going to be applied  
22 universally throughout the program, before that  
23 application, that process is changed.

24 So, I can understand looking at the application  
25 and saying, this is a problem, look how much money. When

1 you go ahead and approve it as you always have done, if  
2 you want to change the process, that's when you are  
3 supposed to bring it before this committee for discussion  
4 and recommendation.

5 I just think it's very unfortunate -- very  
6 expensive appeal process, appears to be setting policy and  
7 practice, and to not have discussions about this kind of  
8 stuff beforehand. So I just encourage the department to  
9 think about those two things and separation between  
10 corrective action section and technical reviewers and SAF,  
11 and using the appeal process to set policy and practice.

12 CHAIRPERSON CLEMENT: Thank you for the comment.

13 If there is no further discussion, the April  
14 27th, 2005 UST Policy Commission Meeting is adjourned.

15 (11:58 a.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 129 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 27th day of April, 2005.

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Deborah J. Worsley Girard  
Certified Court Reporter  
Certificate No. 50477