

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
June 22, 2005
9:00 a.m.

Location: 1110 W. Washington
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Phoenix, Arizona

REPORTED BY:
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1 COMMITTEE MEMBERS PRESENT:

2

3 Gail Clement, Chairperson

4 Hal Gill, Vice Chairman

5 Jon Findley

6 Andrea Martincic

7 Michael O'Hara

8 Philip McNeely

9 Tamara Huddleston, Esq.

10 Karen Gaylord

11 Theresa Foster

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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. We're going
4 to get started here. We got Phil. Phil McNeely just
5 joined us. I assume we are going to have somebody from
6 the AG's office in a very short time.

7 Let's get started. We're at the June 22nd, 2005
8 Underground Storage Tank Policy Commission Meeting.
9 Welcome everyone, and we're glad you are here. We've got
10 a long agenda, and I anticipate for most of the full three
11 hours. We've got a lot to discuss in regards to the cost
12 schedule and the new application forms for the State
13 Assurance Fund, also please be patient.

14 And we need to go through this pretty thoroughly
15 for the Policy Commission because there is a lot of detail
16 here. So, that being said, let's move to the next agenda
17 item, which is approval of the April -- oh, the roll call.
18 I'm sorry. Thank you.

19 Mike.

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

21 MR. MC NEELY: Phil McNeely.

22 MR. GILL: Hal Gill.

23 CHAIRPERSON CLEMENT: Gail Clement.

24 MS. MARTINCIC: Andrea Martincic.

25 MS. GAYLORD: Karen Gaylord.

1 MR. FINDLEY: Jon Findley.

2 CHAIRPERSON CLEMENT: Okay. Thank you. And now
3 we will go on to the approval of the April 2005 meeting
4 minutes.

5 Did everybody receive the meeting minutes?

6 Has everybody had a chance to review them?

7 Is there a motion to approve the April 2005?

8 MS. MARTINCIC: I will move we approve the
9 minutes.

10 MR. GILL: Second.

11 CHAIRPERSON CLEMENT: All in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON CLEMENT: Anyone opposed?

14 (No response.)

15 CHAIRPERSON CLEMENT: For the record, Tamara
16 Huddleston just joined us.

17 And we will go on to the approval of the May 2005
18 meeting minutes. Has everybody received the May 2005
19 meeting minutes?

20 Have you had a chance to review them?

21 Is there a motion to approve the May 2005 meeting
22 minutes?

23 MS. MARTINCIC: I will move that the May minutes
24 be approved.

25 CHAIRPERSON CLEMENT: Second?

1 MR. MC NEELY: Second.

2 CHAIRPERSON CLEMENT: All in favor?

3 (Chorus of ayes.)

4 CHAIRPERSON CLEMENT: Opposed?

5 (No response.)

6 CHAIRPERSON CLEMENT: Thanks. The first agenda
7 item for Mr. McNeely are the status of the rules
8 affecting the UST program.

9 MR. MC NEELY: The status of the rules affecting
10 the UST program. The SAF rules are still in DEQ's
11 possession. We're doing final review trying to get it
12 formatted correctly for the inspector's okay. It will be
13 probably two weeks before we actually submit them. After,
14 it takes three weeks to publish them, so they should be
15 published for formal public comment sometime in mid-July.
16 And it will probably be a six-week public comment period
17 with meetings in August or hearings, I guess you would
18 call them, public hearings, possibly one here in Phoenix
19 and one in Tucson.

20 And then after that, the process will be right of
21 responsive summary and resubmit it to GRRRC, which is
22 probably aggressively October time frame.

23 There is another rule packet that you might want
24 to be aware of. It's called the Declaration of
25 Environmental -- I'm sorry -- Declaration of Environment

1 Use Restrictions Engineering.

2 MS. HUDDLESTON: Controls.

3 MR. MC NEELY: Engineering Controls, Financial
4 Assurance Mechanism Rule. It has nothing to do actually
5 with DEUR. It talks about different options that you can
6 use to actually have a financial assurance mechanism, like
7 bonds or insurance. That is going to go for public
8 comment, formal public comment sometime in July. It
9 doesn't actually affect DEURs. It affects what you can
10 use as a mechanism for financial assurance.

11 That's all for the rules portion.

12 MS. MARTINCIC: Who has -- that's the first I've
13 heard of that. Is that back out to a stakeholder group
14 and can the Policy Commission get a copy of that, please?

15 MR. MC NEELY: When it's approved by the
16 director.

17 MS. MARTINCIC: It hasn't been submitted either
18 to the Secretary of State?

19 MR. MC NEELY: No, it has not. It's not there
20 yet. It's all financial. It's not a technical at all.
21 It just talks about your government, what type of
22 financial documents you have to provide.

23 MS. MARTINCIC: I would still like to get a copy
24 of it if I could see it.

25 CHAIRPERSON CLEMENT: We will be able to get that

1 out to the Commission.

2 MR. MC NEELY: I'll have to get back. We are
3 waiting for it to go to formal comment. We will have to
4 wait for it to be actually published in the registry. If
5 we decide to send it out before for public comment, then I
6 can do it more quickly.

7 CHAIRPERSON CLEMENT: When you are able to send
8 it out, if you would.

9 MR. MC NEELY: I will e-mail it to everybody on
10 the Commission.

11 MS. MARTINCIC: The reason I'd like to see it is
12 just because we're obviously seeing that the financial
13 assurance mechanisms for the UST program affect
14 owner/operators.

15 MR. MC NEELY: And one thing about the UST
16 program, I don't see us having very many, if any, UST
17 controls on the UST program.

18 CHAIRPERSON CLEMENT: Thank you. For the record,
19 Theresa Foster joined the Commission.

20 Thank you, Phil. Then we are going to move to
21 the ADEQ updates and you are back on.

22 MR. MC NEELY: ADEQ updates. The S track, our
23 database we've been talking about, changing to a new
24 database last year, we actually did that this weekend and
25 yesterday. We changed from a visual Foxpro system to

1 Oracle based system, which is in line with the rest of our
2 data at DEQ.

3 For the UST program and linking the UST program,
4 the SAF has not converted over yet. We decided to do it
5 in phases and see how it works. We didn't want to shut
6 down the SAF sections for three to four weeks as we try to
7 fix bugs or do data cleanup; so, in a few weeks, probably
8 two to three weeks, we will be migrating the SAF portion
9 over to the Oracle, and then the whole UST program will be
10 on Oracle based database.

11 And then in the next few months after that we'll
12 be writing queries and reports, things like that, to help
13 management review stuff, help our staff get the
14 information. So, in the next few months we should have
15 some efficiencies with the new database.

16 CHAIRPERSON CLEMENT: Okay.

17 MR. MC NEELY: Senate Bill 1306, some new
18 requirements are kicking in on July 1st or effective July
19 1st. Mainly -- there is two main ones; volunteers and
20 cost schedules. Volunteers are now required to submit
21 preapproval work plans as of July 1st to do work if they
22 claimed \$100,000 on their facility. So, all of the
23 volunteers that have over \$100,000 that's been claimed on
24 their facility has to submit preapproval work plans and do
25 work.

1 Also, the one cost schedule, on July 1st we'll
2 have one cost schedule go into effect, so all the previous
3 ones will be no longer effective.

4 And on work plans, we're still going to be using
5 the actual approved work plan. We use the costs in the
6 work plan. That was approved prior to July 1st.

7 That's all I have for the program updates.

8 CHAIRPERSON CLEMENT: So you will use whatever
9 was in the work plan if the costs -- the total costs, you
10 have to break it up according to the new cost schedule?
11 I'm not clear how that is.

12 MR. MC NEELY: You want to answer that, Judy?

13 MS. NAVARRETE: For preapprovals that are already
14 in-house, we're using a cost schedule, but it came in
15 under.

16 CHAIRPERSON CLEMENT: Okay. That's going to be
17 complicated for quite awhile, then.

18 MS. NAVARRETE: For us.

19 MR. MC NEELY: It will be easier for the
20 consultant and owner/operator, but hopefully those
21 preapprovals will get -- the work will get done quickly.
22 We're going to push to get work done, then go on to new
23 preapprovals under the new cost schedule, so there will be
24 a migration period, transition period.

25 CHAIRPERSON CLEMENT: And I don't mean to switch

1 topics, but I forgot to ask you this in your previous
2 things.

3 The 2004 metrics for the annual report, are those
4 anywhere yet?

5 MR. MC NEELY: That's actually the next bullet
6 point.

7 CHAIRPERSON CLEMENT: Okay.

8 MR. MC NEELY: But 2004 metrics, we need to talk
9 exactly what you want. You know, we could put together
10 the information that we present every month to the Policy
11 Commission. And we have the budget for the Policy
12 Commission, what they spent. We are still trying to get
13 success stories internally. I'm not sure if you want to,
14 you know, talk about the success of the Policy Commission
15 and all that.

16 CHAIRPERSON CLEMENT: We've got all that. I've
17 got that written already. All I'm looking for to be clear
18 is what we did last year. If you could take a look at
19 what we formatted last year. We weren't able to get the
20 -- capture the full calendar year because of the way that
21 the data were captured for the 2003 report. But I think
22 we've changed that, so we should be able to get the full
23 calendar year in the metrics captured for 2004 and include
24 those in the report.

25 And I can -- Al, I know, sent me a copy of the

1 report, so if you need that again, either me or Al could
2 send that to you.

3 MR. MC NEELY: And we have that information. I
4 will get it e-mailed to you probably next week.

5 CHAIRPERSON CLEMENT: I mean, I just think it's
6 nice to have that summary information, how many sites were
7 closed, how many sites are new, you know, all those
8 metrics stuff that we looked at in the past.

9 MR. MC NEELY: And we have all that.

10 CHAIRPERSON CLEMENT: Okay. Great. Thank you.
11 Keep rolling. Any other things?

12 MR. MC NEELY: That's all I have.

13 CHAIRPERSON CLEMENT: Any questions or comments
14 for Phil before we move on?

15 Then we will move to the UST Corrective Action
16 Monthly Update with Mr. Drosendahl.

17 MR. DROSENDAHL: Yes. I'm Joe Drosendahl, the
18 manager of the Corrective Action Section. And as Phil
19 says, we just got our new database, so hopefully we can
20 start, you know, getting out reports with our productivity
21 real soon.

22 It's been pretty busy in the Corrective Action
23 Section. We've had some personnel changes. We've hired a
24 Hydro 2 and a Hydro 3 in the Site Investigation
25 Remediation Unit, and unfortunately, Tim Irwin, who's the

1 unit manager of the Enforcement Unit, he took a position
2 in Waste Programs Division, so, we lost him. He's been
3 with the department for -- the program for, I think,
4 12 years, 14 years. And so that's some personnel changes.

5 The Tier 2 -- before I go on to that.

6 Well, you know, so we've had some personnel
7 changes. We are hiring another hydrologist for the State
8 Lead Unit, and we're also trying to hire someone for our
9 legal assistant to help us with ownership determinations
10 and things like that. So, hopefully we can get those two
11 positions hired, then I think we will be fully staffed
12 again and on the road.

13 Kind of jumping into the next topic, the risk
14 assessments, the backlog of risk assessments is going
15 down. I think we only have six risk assessments that are
16 backlogged.

17 The Tier 2 software, we're going to be putting
18 that on the Web. As soon as that can be arranged, we're
19 going to be training internal staff on July 11th and the
20 19th, so we will be getting that out real soon. Hopefully
21 that will help both internal and external risk
22 evaluations.

23 Before I go into the Route 66, that's the update
24 for the Corrective Action Section.

25 CHAIRPERSON CLEMENT: Is the external training

1 for the risk assessment software Tier 2 scheduled yet?

2 MR. DROSENDAHL: No, but we will schedule
3 external training.

4 CHAIRPERSON CLEMENT: It looks like if you are
5 going to have July training internally, you will probably
6 extend that into the August time frame. Would that be
7 correct?

8 MR. MC NEELY: Probably. August, maybe. A lot
9 of people aren't here in August.

10 CHAIRPERSON CLEMENT: Right, exactly.

11 MR. MC NEELY: September, mid September.

12 CHAIRPERSON CLEMENT: You might want to do two
13 sessions.

14 MS. MARTINCIC: It is an important thing, this
15 rule, the SAF formal hearing that will be scheduled in
16 August.

17 CHAIRPERSON CLEMENT: Mr. Gill?

18 MR. GILL: Just for a clarification, you said
19 that the software is going to be coming out real soon.
20 Will it be coming out before the training or after the
21 training?

22 MR. DROSENDAHL: Before the training.

23 MR. GILL: So we can start working on it and call
24 in if we have questions?

25 MR. DROSENDAHL: Oh, no, you can't call in -- oh,

1 yeah, sorry. Yeah, we figured that it's better if we were
2 planning on training internal staff, then getting it out,
3 but we couldn't schedule the staff training until the
4 11th, and we figured we might as well get it in on the Web
5 and get people going.

6 MR. GILL: Appreciate that.

7 MR. MC NEELY: What we're really trying to do
8 with the software is we didn't really want to put it on
9 the Web right now, because Jeanene Hanley is my only risk
10 assessor. I didn't want everyone, you know, a thousand
11 people calling her, because then I won't get our internal
12 training done. I won't be able to get our Soil Rule done.

13 So what I was trying to do is have some key
14 people in Joe's group get trained on just the mechanics of
15 how to use it, because I think a lot of the questions will
16 be if it's not running right, so that's what we're trying
17 to do, is get a handful of people trained where we
18 actually can call in, not our risk assessor, but someone
19 that knows how to use the program and answer questions.

20 And that's what we've been sort of delaying.
21 It's ready, but we just didn't want to put it out there
22 because we thought it would be overloaded and we have no
23 one to answer questions.

24 CHAIRPERSON CLEMENT: Any other questions or
25 comments for Joe -- or Mr. Drosendahl?

1 And then we will go on to the Route 66
2 presentation.

3 MR. DROSENDAHL: Yes. As requested, the Policy
4 Commission asked for kind of an update on the Route 66
5 Initiative, which is the handout that you have in your
6 packet. It's been a year since we initiated that. And
7 Bill Engstrom, who's been one of the major players in the
8 Route 66 put together this presentation. A lot of it is
9 from the information on our Web site. So, if you want
10 even more information, definitely, at the end of the
11 handout, there is the link to our Web site, so I suggest
12 -- I recommend you go look at that.

13 You know, internally, we see the Route 66
14 Initiative as being a success so far. It's not always
15 been easy. It's been -- there's been a lot of hard work
16 done by not only internal staff but also the external
17 stakeholders.

18 You know, in the beginning we definitely wanted
19 just to increase the communication and cooperation between
20 DEQ, the owners and operators, the volunteers, the
21 consultants, and the local public and government, you
22 know, officials, and I think we've succeeded so far.

23 There is still a lot more work to do. We just
24 recently assigned all the various other cities along Route
25 66 to two more case managers, so we're going to be

1 starting to do these same activities along the rest of
2 Route 66. So we should see more activity in the coming
3 months from those cities.

4 Up-to-date, most of our activities have been done
5 in Holbrook, Winslow and Joseph City. And Holbrook, a lot
6 of the Corrective Action Plans that were submitted have
7 been reviewed and are now out. Some have been approved,
8 some are still being revised. You know, there still are
9 some -- everything hasn't gone real smoothly, mostly due
10 to just some technical problems in these areas with the
11 shallow groundwater, the vadose zone composition and the
12 aquifer composition causing some problems. But we seem to
13 be, you know, slowly working through those, and we're
14 getting these sites closer to closure, and we've actually
15 closed a few.

16 Part of the Route 66 Initiative also involves the
17 Municipal Tank Closure Program, which also includes county
18 areas, and I think this -- today, actually, there is some
19 USTs in Winslow that are being removed through the
20 program. And that's also been real successful.

21 And basically we will just continue through the
22 rest of Route 66 and try to get the sites either on its
23 way or closed, definitely for a variety of reasons; one,
24 to protect and help the environment; two, because the
25 State Assurance Fund is going to be going away in

1 relatively soon. And also help the cities along Route 66
2 to revitalize their cities and, you know, also to increase
3 the property values with these LUST sites being closed.

4 The EPA -- I think we reported that the EPA is
5 really interested in this initiative and they're
6 interested in doing the same thing nationally along Route
7 66. So, we're hoping that through cooperation and
8 communication between us and the outside, we will continue
9 to be successful and, you know, overcome any barriers or
10 road blocks that come in the way.

11 CHAIRPERSON CLEMENT: Joe, I had a question on
12 the way you are going about it technically. When I was on
13 the Technical Appeals Panel, one of the things that it
14 seemed that was problematic about the Holbrook and Winslow
15 areas was it was being handled real piecemeal. Like this
16 service station, this corner, this service station. Are
17 you taking a more holistic look at tying in all the data
18 to try to figure out more of an areawide investigation,
19 areawide corrective action approach?

20 MR. DROSENDAHL: When possible, yeah. You know,
21 in the City of Holbrook, you know, there is a lot of
22 sites, and a lot of the sites are being managed for the
23 owner, operators and volunteers by the same, you know,
24 consultant company. And then there are a few other sites
25 and the state lead is dealing with some sites. So where

1 it can be, basically, there is a lot of communication and,
2 you know, the sharing of data and everything. So we --
3 the most part, yes.

4 We haven't done, you know, where basically all
5 the work is being done at the same time, that would be
6 just too monumental to arrange, but there is a lot of
7 communication going on. So, you know, no sites are just
8 going on in a vacuum.

9 Internally, in Holbrook all the sites are managed
10 by Chiou Chen of our staff. She knows what's going on at
11 each site and everything, and we are seeing what works for
12 one site and seeing if that can work for another site, so,
13 there is definitely a lot of sharing and communication.

14 CHAIRPERSON CLEMENT: Good. Because it would
15 seem like, from my experience in that area, anyway, if you
16 clean up one gas station, the right next-door property was
17 contaminated. I mean, you really couldn't clean up one
18 site unless you looked at it more holistically.

19 So, good, I'm glad to see that's moving.

20 Any questions or comments on it?

21 MS. MARTINCIC: Thanks for providing that.

22 CHAIRPERSON CLEMENT: Thanks very much, Joe.

23 We will move on to the SAF Monthly Update with
24 Judy Navarrete.

25 MS. NAVARRETE: Judy Navarrete from the State

1 Assurance Fund.

2 Hopefully you all got your printouts in your
3 packets, and the State Assurance Fund has had a couple of
4 real good months, and last month we did 106
5 determinations, so we're still looking for two hydros. We
6 are still short in that area and hoping to hire a couple
7 more hydros soon.

8 Anyway, I would like to say, even though we are
9 receiving a lot of applications since March, we've only
10 added 28 to our list of applications, because in March we
11 were at 401 for applications in-house, and this month at
12 the end of May we were at 428. So we're trying to get
13 them moved through as fast as possible.

14 And then there is the appeals page. Does anyone
15 have any questions on informal or formal appeals?

16 CHAIRPERSON CLEMENT: Go ahead.

17 MS. MARTINCIC: First I want to ask, and I don't
18 know if you can answer this or not, but I noticed that two
19 of the top decisions in February, March were in favor of
20 ADEQ. Is there anything that the regulated community
21 needs to be aware of, was it like the same issue or
22 something that needs to be put on the bulletin. I just
23 know in the past we've talked about --

24 MS. NAVARETTE: Those are site specific.

25 CHAIRPERSON CLEMENT: I noticed that your appeals

1 are going up. May, you're up to 49 in the informal
2 appeals filed. It just causes me concern, because with
3 your workloads, any appeals that you've got take so much
4 time. Is there a pattern that your seeing in why they've
5 gone up?

6 MS. ROSIE: Tara Rosie. I think it has to do
7 with the increased number of determinations, but also
8 we're getting appeals on various stages of the process
9 that are informally appealed, such as with preapprovals,
10 the technical decision, that may be a notice of
11 deficiency, that becomes an informal appeal if it's
12 appealed. And then you also have the SAF determinations
13 that are informal appeal. So, you potentially could have
14 two informal appeals on the same application.

15 CHAIRPERSON CLEMENT: Do you think this is a
16 pattern, though, that it's going up, or do you think it's
17 just the varying?

18 MS. ROSIE: Most of the informal appeals have to
19 do with correcting cost schedule codes, and the
20 information we get with the informal appeal allows us to
21 resolve those, or it's missing information, and additional
22 information is provided with the informal appeal request.

23 CHAIRPERSON CLEMENT: Well, I don't know if my
24 question is answered. Do you believe that there is a
25 pattern or do you think that it's -- I mean of an

1 increasing number of informal appeals, or do you think
2 it's just the variability that you see month to month?

3 MS. NAVARRETE: The more determinations we make,
4 the more informal appeals we are going to get because we
5 cannot solve every little detail on those if there is
6 something wrong, or if they don't give us the information.

7 And a lot of them, we send out ANs on the front
8 end, and we never get a response, so we don't have any
9 recourse except to issue the final interim determination,
10 and then they meet -- then they appeal it. And a lot of
11 times I've told you that gives them more time to answer
12 it. If they're busy, they just say, send us the
13 determination and we will catch it in appeal.

14 CHAIRPERSON CLEMENT: Yes. Mr. McNeely?

15 MR. MC NEELY: I think it's a combination of
16 more applications being reviewed. There is nothing really
17 changed. There is no pattern. So I think it just goes up
18 and down.

19 I'm not sure what June is going to look like. If
20 you look at February, we had 62 apps with 23. If you
21 double that, that's 46. We also did twice as many, so, I
22 don't know. It's close.

23 CHAIRPERSON CLEMENT: Mr. O'Hara.

24 MR. O'HARA: I was going to ask a question,
25 basically the same -- pointing out the same data. It

1 looks as if in the last two months they almost doubled
2 their output in terms of the initial determinations, I
3 would expect that appeal would shortly follow that
4 determination. You may even see next month go up pretty
5 high.

6 MR. NAVARRETE: Uh-huh.

7 MR. O'HARA: The question is, a lot of these are
8 due to cost ceiling schedule readjustments. Do you expect
9 in July, we have one cost schedule going forward, that
10 that might eliminate or reduce a lot of these?

11 MS. NAVARRETE: It's going to eliminate some, but
12 all the preapprovals will still be under the -- all the
13 preapprovals that are approved up to July 1st will still
14 be under the old cost schedules, so people who make errors
15 on the wrong year or the wrong this or that, we will still
16 have those errors.

17 MR. O'HARA: The expectation is --

18 MS. NAVARRETE: I think the new cost schedule is
19 really going to help a lot.

20 CHAIRPERSON CLEMENT: Any other questions or
21 comments on the State Assurance Fund's presentation?

22 I want to compliment the DEQ staff and the SAF
23 folks. I know how hard you must all be working, and to
24 see this number increasing in terms of the determinations,
25 and at the same time trying to deliver all of those

1 deliverables that you had to get out by July 1st, I mean,
2 really, congratulations. We really appreciate that level
3 of effort. We may not agree with everything you have
4 done, but we appreciate the level of effort.

5 Okay. We are moving right along.

6 MR. FINDLEY: Can I make one comment?

7 We got these by e-mail, like this form right
8 here. Unfortunately, the file name was exactly the same
9 as the previous month. Could we get -- and there is no
10 date on this form, on the paper form. Could we get dates
11 in both the paper form and the file name so that we can
12 attempt to keep our computer records straight as we had
13 talked about before?

14 MS. NAVARRETE: Oh, you mean you want a date on
15 it?

16 MR. FINDLEY: Yeah.

17 MS. NAVARRETE: Okay. That's just the backup
18 information for the first page.

19 MR. FINDLEY: But it's a separate computer file
20 and separate piece of paper.

21 MS. NAVARRETE: Okay. Yes. I gotcha.

22 MR. FINDLEY: I have trouble keeping track.

23 CHAIRPERSON CLEMENT: That's a good point. Thank
24 you, Jon.

25 Okay. Are we ready to jump into --

1 MS. MARTINCIC: Sure.

2 CHAIRPERSON CLEMENT: Ms. Martincic is going to
3 present the Financial Subcommittee update.

4 MS. MARTINCIC: We had a Financial Subcommittee
5 meeting last Friday and, unfortunately, there was a little
6 bit of a mishap in communication about the meeting, so the
7 notice didn't go out to stakeholders until 11:30 on
8 Thursday, which was unfortunate. So, I think Bill Bunch
9 and I had a decent discussion of the issues.

10 So, I guess I wanted to bring to the Commission
11 that I'm a little frustrated with this process with the
12 Financial Subcommittee's task of looking into the effect
13 of financial responsibility and whether it's impacting
14 owner/operators and what can be done, because I just feel
15 that there hasn't been a lot of participation with
16 stakeholders, the regulated community, and it's been
17 difficult getting some of the reports that I feel we need
18 to be able to analyze the situation because of the
19 database transfer going on here at DEQ.

20 So, I guess I would like to know whether this is
21 still something we should be looking into or not, because
22 it does take up time and, you know, I haven't seen a lot
23 of the other Commission members come to the meetings. I
24 guess I want to reiterate whether this is something that
25 the Commission as a whole is concerned about or is it

1 something that I should be pursuing for the regulated
2 community on my own, not through the Commission, because
3 it is frustrating to work on putting together agendas and
4 trying to research information when there is no support.

5 CHAIRPERSON CLEMENT: Mr. McNeely?

6 MR. MC NEELY: I'd recommend, because you've
7 already met about three or four times, to have some type
8 of recommendation to the UST Policy Commission in terms of
9 outreach and --

10 MS. MARTINCIC: We did make a recommendation last
11 month that we would like to see DEQ go out and do some
12 outreach on financial responsibility across the state so
13 that owner/operators know that they need to be in
14 compliance, not only with federal financial
15 responsibility, but there was a phaseout, you are going to
16 have to rely on that commercial insurance for any
17 potential future leaks.

18 And I wanted to discuss at this last meeting
19 about the schedule, because we are looking at a year out,
20 if you don't get some of these things kind of calendared
21 and scheduled, it's probably not going to happen. So, I
22 didn't know with DEQ's resources being the way they are,
23 is that still something the agency is willing to do or
24 not.

25 MR. MC NEELY: I would say in terms of the

1 recommendation, we need, I think, a formal recommendation
2 from the Policy Commission. I thought we were talking
3 about getting EPA involved, getting some type of
4 professionals that actually know insurance.

5 MS. MARTINCIC: Right.

6 MR. MC NEELY: Things like that. Put some
7 documents together. It wasn't just going to be, we
8 recommend DEQ to go out and do this. We don't have the
9 expertise, and we all agreed on that.

10 And also we are doing outreach. We do 600
11 inspections a year. We are talking about financial
12 responsibility in every single inspection, so that's
13 continuing, but I think -- I thought the recommendations
14 would be more maybe an APMA-sponsored seminar on how to
15 buy insurance, EPA, maybe someone from the Insurance
16 Commission, things like that, more comprehensive type.

17 MS. MARTINCIC: I guess what I am saying is that
18 I have not been able to get support from the insurance
19 industry. I cannot find an expert within the Department
20 of Insurance that is willing to come and talk. I have not
21 been able to find an attorney in the state that is willing
22 to come and talk about how owner/operators should purchase
23 insurance.

24 And I think I have been making calls to lots of
25 people. So, I guess, you know, I'm sort of at a point

1 where I'm at the wall and, you know, I personally as one
2 individual am not going to be able to break that wall.

3 So, I'm just wanting to hear that this is
4 something that we still want to pursue. Maybe the agency
5 can help me find someone at the AG's office, maybe the
6 AG's office can help. I have not been able to find, like
7 I would think there would be a third-party independent
8 type person within the State who is knowledgeable on
9 insurance and can make general recommendations on what to
10 look for in a policy. I'm not looking to recommend one
11 carrier over another. That's not appropriate. But just
12 general information on what to look for.

13 So, we continue to talk about these issues, you
14 know, month after month but I just --

15 CHAIRPERSON CLEMENT: From my perspective, not
16 being an expert in this area, I think this is extremely
17 valuable work for the owners and operators, and I am sorry
18 that there hasn't been more participation, but this is an
19 important function, and how we best, you know, get the
20 support to get the function done, I'm not sure. But we
21 are going to need the State's resources. We as
22 independents can't pull Department of Insurance in
23 probably, and you may be able to do that or, Tamara
24 Huddleston, maybe in your realm of finding an insurance
25 legal expert, whether it's in-house at the AG's office or

1 Department of Insurance, but we're going to need some help
2 with this.

3 MS. HUDDLESTON: As far as the AG's helping, that
4 would be, I think, getting awfully close to inviting legal
5 advice and that's not something we can do.

6 CHAIRPERSON CLEMENT: What about the Department
7 of Insurance in terms of here's what a typical insurance
8 policy is and these are the things you need to look for.
9 This is not any of our areas of expertise, obviously, and
10 so we're struggling a little bit with it.

11 MR. MC NEELY: We can help try to find that, but,
12 we don't have the expertise either, so we can help look,
13 and I know there is people in the City of Phoenix that
14 actually has some expertise, not the city, but here
15 locally.

16 MS. MARTINCIC: Yeah. I've been making calls
17 like a lot, and no one -- you know, I get the answer that
18 Tamara just said, no one wants to touch it. So, you know,
19 and at the last meeting we talked about maybe Al create a
20 trifold or something that I can provide to my membership,
21 but everyone is too afraid to, you know -- but I got to
22 get the information somewhere, too. I'm not an insurance
23 expert.

24 So, you know, two months ago we talked -- the EPA
25 came in and we talked to them about having them hopefully

1 pull their resources together out in DC to put together
2 maybe a presentation on financial responsibility and those
3 issues so that if we could go out and do these kinds of
4 meetings. But I guess I'm hearing from you, though, that
5 it could be a resource issue to do that.

6 MR. MC NEELY: I'm not sure what the
7 recommendation is and what type of meetings. We do go out
8 all the time but --

9 MS. MARTINCIC: I thought in April we made a
10 recommendation to -- the Commission made a recommendation
11 to the DEQ that they should do meetings. Maybe we didn't
12 do that as a formal recommendation.

13 CHAIRPERSON CLEMENT: We didn't do it probably to
14 the level Mr. McNeely wants to see it done. Perhaps we
15 can put that in writing. We did discuss it, and we
16 didn't, quote, vote on it, but we did discuss it; and so
17 maybe we just put it in writing and have further
18 discussion from the Commission's perspective on that, and
19 I think that's a pretty self-evident need.

20 MS. MARTINCIC: I'm just worried about timing.
21 The agency is pretty bogged down with these rules and
22 everything else that's going on, and I guess if we're
23 going to make a recommendation that more outreach needs to
24 be done, we probably need to do it sooner rather than
25 later so we get the formal wheels turning, so to speak,

1 because it's a year out now.

2 CHAIRPERSON CLEMENT: Ms. Gaylord?

3 MS. GAYLORD: Chairman Clement, Andrea, correct
4 me if I am wrong, but I think specifically what we were
5 worried about or what I have been worried anyway, is the
6 small owner/operator in the rural area.

7 I think my impression that I have gathered so far
8 is that the brokers in the urban areas seem to be more
9 sophisticated in their understanding of how to get quotes
10 on insurance, perhaps how to get past these issues of
11 distinguishing past releases from future releases, which
12 seems to be critical of getting insurance coverage, but
13 some of the small owner/operators out in the rural areas
14 don't have a broker that understands that process and
15 don't have necessarily, you know, banks of lawyers and
16 consultants at their beckon call to make sure they get new
17 information out to the insurance company that they've been
18 denied coverage.

19 And certainly I have personal experience seeing
20 single operators who really can't -- who get denied
21 coverage, can't understand what the issues are, can't
22 understand what they are supposed to do. So, it seems to
23 me specifically, and tell me if I'm right, that the
24 outreach we're talking about really is for those people.

25 MS. MARTINCIC: I think that's like an issue, but

1 I think we've also discovered there is a much larger issue
2 in terms of the carriers, the national carriers of
3 insurance, not just the broker's understanding. That is a
4 problem, but it's a much bigger picture problem in that
5 the carriers are nationally changing the way that they are
6 writing policies, and they're not renewing policies if
7 your tanks are over 20 years old if you're with a certain
8 carrier.

9 Other carriers are putting in clauses now in
10 their policies that say if you don't notify them within
11 48 hours of an upgrade, your whole policy is void, and
12 it's on like page 21 of the policy.

13 And if people don't read that -- and that's what
14 I'm trying to say is, I feel there needs to be some kind
15 of general informational-type meeting to say, this is what
16 you need to look for in your policy, this is how you
17 should evaluate two different policies, you know. I mean,
18 it's easy to say, yeah, go with the cheapest policy if you
19 just go with your pocketbook, but I don't want people to
20 do that and not understand the consequences.

21 And so I'm talking about a general type
22 discussion of what to look for within a policy so you can
23 evaluate that properly. And so far I haven't really --
24 you know, you talk to certain carriers and they're skewed
25 to their policy, obviously. Different brokers have

1 different agreements with different carriers and, you
2 know, so it's just been a tangled web, I guess.

3 So, I just would -- I would just encourage
4 continued support, I guess, on the issue. We will
5 continue to look into it.

6 But another thing that Bill brought up in this
7 last month's meeting is the fact that there is these --
8 and correct me, I'm using the word we talked about in the
9 meeting, but limbo, like these limbo sites that may be
10 suspected release sites but not confirmed sites, and in
11 terms of insurance and the ramifications there, that's
12 sort of an unknown as well.

13 And then the Financial Subcommittee also would
14 like to get from DEQ a list of the tanks and the year they
15 were put in the ground, and it's my understanding that we
16 haven't been able to get that because of the database
17 situation, but hopefully as that gets ironed out, I would
18 like to have that report so that we can kind of get a
19 better scope of how many tanks are actually over 20 years.
20 I'm poling my own membership, but not everyone is a member
21 of APMA, but it would be nice to get information data from
22 the agency on that, because I think that's information you
23 have.

24 CHAIRPERSON CLEMENT: That data regarding the
25 tanks, the number of tanks and their age, when would that

1 be available with the new database?

2 MR. MC NEELY: I have no idea, really. I know
3 it's in the database. I'm not sure when we can get it
4 out.

5 MR. KERN: Ron Kern, DEQ. That's a good
6 question. Right now with the transition, I'm still trying
7 to populate a lot of those data fields. That may be two
8 to three months. I have no real firm date on that right
9 now.

10 I've been talking with Andrea about that in the
11 Financial Subcommittee. I was aware she wanted that
12 information, and I am trying to get that information
13 together, but it could take a while with the transition.

14 CHAIRPERSON CLEMENT: Thank you. Ms. Gaylord.

15 MS. GAYLORD: The Action Item No. 5 in the May
16 agenda, which is a breakdown of the number of operating
17 facilities and preexisting conditions --

18 MS. MARTINCIC: Yeah.

19 MS. GAYLORD: -- is that related to this -- is
20 that an action item that the subcommittee --

21 MS. MARTINCIC: We are trying to get that. We
22 haven't gotten that report yet either, but that's another
23 -- unfortunately, the database changeover has kind of come
24 at an untimely -- I guess there is never a timely --

25 MR. MC NEELY: The old database did not separate

1 the way --

2 MS. MARTINCIC: So, that report you couldn't have
3 even gotten it?

4 MR. MC NEELY: How many facilities had
5 preexisting conditions that are currently operating, we
6 gave you that number.

7 MS. MARTINCIC: Right.

8 MR. MC NEELY: I forgot the number. It was like
9 400 or 263, but then you wanted it split down when the
10 releases, when the tanks, I don't have any way to do that
11 unless you start going through it with your hands, which
12 someone could do, but I don't have the staff to do that
13 right now.

14 MS. MARTINCIC: So, I guess the bottom line is
15 the State really right now can't say how many tanks are in
16 the ground and how many are 20 years old?

17 MR. MC NEELY: We got 2,600 tanks -- or 7,600
18 tanks in the ground, approximately.

19 MS. MARTINCIC: But you can't say how many are
20 20 years old?

21 MR. MC NEELY: I can't query on that. I can
22 print out all the tanks, probably, and start digging
23 through spreadsheets but --

24 MS. MARTINCIC: Well, is it all in one
25 spreadsheet listed out? Because if you would provide me

1 with a spreadsheet with a thousand tanks and how many
2 tanks --

3 MR. MC NEELY: It should be by facility. You
4 would have to go through probably every single facility.

5 MS. MARTINCIC: Each facility one page? You
6 don't have a spreadsheet that just works out numbers?

7 MR. MC NEELY: No. If I had it, that's probably
8 what you want, but I can't get that.

9 CHAIRPERSON CLEMENT: Ms. Navarrete?

10 MS. NAVARRETE: Thank you. Judy Navarrete.

11 Have you polled your membership to see how many
12 people do not have insurance? Because when we went
13 through that insurance -- that they needed insurance to
14 come, and they needed to go to their insurance company, we
15 really didn't end up with that many owners and operators
16 who are out of compliance.

17 MS MARTINCIC: Right. The point is that it's a
18 future looking issue, because with the Fund phasing out,
19 we're concerned, because we're hearing carriers are
20 changing the way that they are writing and renewing
21 policies. So, initially, there was the situation where
22 Karen's client couldn't find insurance, so there was a
23 question of whether this was the problem, that people
24 can't get financial assurance, commercial, you know,
25 pollution liability insurance to meet the federal

1 responsibility.

2 MS. NAVARRETE: If they've had it all along --

3 MS. MARTINCIC: You have to renew every year.

4 MS. NAVARRETE: That's right.

5 MS. MARTINCIC: So your carriers are changing
6 their policy, potentially in a year you might not be able
7 to get insurance. That's what we're concerned about that
8 the Financial Subcommittee is talking about.

9 CHAIRPERSON CLEMENT: The qualifications for
10 availability of insurance are changing and the policies
11 themselves are changing, and as the insurance carriers'
12 additional contribution and the SAF phases out, those
13 things are happening simultaneously, and owners and
14 operators are going to get caught in that and we're trying
15 to anticipate that and help them understand what their
16 future liabilities are going to be.

17 MS. NAVARRETE: So you are trying to educate them
18 on the transition part of it, insurance transition?

19 CHAIRPERSON CLEMENT: Insurance and availability
20 and what the criteria are going to be, so Andrea has done
21 an excellent job trying to gather the information, but
22 it's very fluid, and it's very difficult.

23 MS. MARTINCIC: And the carriers don't really
24 want to share that information.

25 CHAIRPERSON CLEMENT: Ms. Gaylord.

1 MS. GAYLORD: When I last checked in, we were
2 still waiting to hear from -- get some of those last
3 responses to the inquiries we sent out about financial
4 assurance. Have we now heard from everybody and do we
5 have a definite number of how many people don't have
6 financial assurance and aren't able to get it?

7 MR. KERN: Ron Kern, DEQ. No, we really don't.
8 I mean, basically I look at our day to day, as Phil
9 mentioned, going out on inspections and meeting
10 face-to-face with the regulated public out there. That's
11 reality, and right now we're getting better than
12 75 percent compliance, returns to compliance which is
13 within 45 days, I'm getting better than 90 percent
14 compliance.

15 So, those are numbers I actually believe in. And
16 then we're going to look down the road to make sure that
17 we are in touch with every last owner and operator out
18 there, particularly in the rural areas. Those are the
19 numbers I believe in when I get the face-to-face.

20 CHAIRPERSON CLEMENT: Ms. Gaylord.

21 MS. GAYLORD: And then for the 10 percent, you
22 mentioned you were getting better than 90 percent over a
23 certain time period, were those 10 percent that aren't
24 responding with proof of financial assurance because they
25 don't have financial assurance, can't get financial

1 assurance, or they just aren't responsive?

2 MR. KERN: Essentially, they don't have FR, and I
3 will look to some sort of other mechanism to encourage
4 them to get FR.

5 Some aren't aware of it; some just don't respond
6 within a timely manner. They might respond instead of
7 45 days, which is my compliance deadline, they will
8 respond within 90 days, or maybe even 120 days. I just
9 really do check at the 45-day period for that 90 percent
10 compliance with FR requirements.

11 MS. MARTINCIC: Ron, when you're out doing the
12 inspections, is that public information? Because I guess
13 I'd like -- I think it would be helpful to the Financial
14 Subcommittee, maybe even the Commission at large, to see
15 the sites that are visited, the number, because to say
16 90 percent compliance, well, how many, what's the realm
17 that you are talking about. I mean, did you go visit ten
18 sites this last month and 90 percent of them are in
19 compliance and are they mostly in the metropolitan area,
20 or are they statewide, because potentially I see this more
21 of a rule issue. I thought it was going to be strictly
22 rule, but I'm finding out that it's not, that there are
23 sites within the metropolitan areas as well that have
24 tanks over 20 years; but, I guess I'm curious to know if
25 you can share that information with us.

1 MR. KERN: Ron Kern. Yes, it's public
2 information. I guess all I'd want to know, since it's in
3 a huge spreadsheet right now, electronic, unfortunately --

4 MS. MARTINCIC: Right.

5 MR. KERN: -- but what specific information you'd
6 want, because there is a lot of information that is being
7 provided.

8 MS. MARTINCIC: Would you have like a snapshot
9 from the last six months of how many sites you visited,
10 what county they were in?

11 MR. KERN: So you just look at my bottom line
12 figures, or --

13 MS. MARTINCIC: And maybe I can get with you
14 after the meeting and talk about that more, but I think
15 that might be helpful. Maybe we can get some of the
16 information through that, maybe.

17 MR. KERN: A lot of what you are asking for is
18 probably readily available.

19 CHAIRPERSON CLEMENT: Great.

20 MS. MARTINCIC: So, instead of being able to
21 query the full database, we will be able to query the
22 inspection database, it sounds like, which is a subset of
23 the full database?

24 MR. KERN: Yeah.

25 CHAIRPERSON CLEMENT: How do you decide on which

1 facilities to inspect? What's your criteria for an
2 inspection?

3 MR. KERN: I have several. Basically, when was
4 the last time a facility was inspected. If it hasn't been
5 inspected in three to four years or longer, I'm pretty
6 much going to put it at the top of the cue for inspection.

7 Summer months, I'm out in the rural areas,
8 obviously I'm out of Phoenix. Winter months, I'm in
9 Phoenix.

10 Groundwater, basically if a community is
11 dependent upon groundwater, which is predominantly in the
12 rural areas, I'm going to target those a little bit more
13 for more frequent inspections.

14 I'm also using FR as one of the targets right
15 now, too. If I find through our information that a
16 facility hasn't had FR in quite awhile, or the owner
17 hasn't had FR in quite awhile at a facility or all of the
18 person's facilities, they're going to get a visit. I
19 really do want to get out the FR message to our total
20 universal regulated public, so we've been working on that
21 since April of 2004.

22 CHAIRPERSON CLEMENT: Great. Okay. So let's
23 summarize.

24 MS. MARTINCIC: So, basically we will continue to
25 look into these issues. I'm going to try to find someone

1 that must exist, I hope, in the State, who could talk
2 about insurance in a general manner, about how to shop for
3 it. And if I could do that offline as ATMA, I will try to
4 do it that way. I think that's a valuable service that
5 owner/operators deserve with the phasing out, the
6 importance of insurance right now, and then we will have a
7 meeting next month, July.

8 CHAIRPERSON CLEMENT: When is your July meeting
9 scheduled?

10 MS. MARTINCIC: It's actually the first Thursday,
11 but I think that's probably right before the 4th, so maybe
12 we will do the second Thursday.

13 CHAIRPERSON CLEMENT: Right now your Financial
14 Subcommittee is scheduled for July 7th.

15 MS. MARTINCIC: That sounds good.

16 CHAIRPERSON CLEMENT: You are going to hold that
17 date?

18 MS. MARTINCIC: Yeah.

19 CHAIRPERSON CLEMENT: Mr. O'Hara, you had
20 something?

21 MR. O'HARA: A question best directed to Andrea.
22 As a Commission, what are our ultimate goal of studying
23 this issue of the Subcommittee? Is it to get education
24 out to the public on insurance and other mechanisms for
25 financial responsibility, or is it ultimately the goal to

1 recognize that insurance may not be adequate when the Fund
2 goes away; and if that's the circumstance, then isn't our
3 goal to recommend some alternatives to the legislature?

4 MS. MARTINCIC: That's what I've been asked to
5 make recommendations to the Policy Commission after
6 researching these issues, what a recommendation would be,
7 if any.

8 MR. O'HARA: We have no impact or can't have no
9 impact on what insurance companies do. It's a marketplace
10 driven. They can change their policies, also.

11 MS. MARTINCIC: Absolutely.

12 MR. O'HARA: If there is going to be an impact
13 today, we need to make a recommendation to the
14 legislature.

15 CHAIRPERSON CLEMENT: Part of the issue is, Mike,
16 is trying to get our arms around what's actually going on
17 with the owners and operators so we can understand, is
18 this a problem, is this a problem, is this a problem, is
19 the future looking like these problems are going to be
20 remedied or are we going to have to create something or
21 recommend something that is new.

22 MR. O'HARA: That is a lot to anticipate to know
23 how they are going to react when they get a claim.

24 CHAIRPERSON CLEMENT: But what we can do, we can
25 do some basic things, and Andrea has really been working

1 hard. I appreciate your effort.

2 Should we be having a formal vote in terms of a
3 recommendation regarding owner and operator outreach in
4 the rural areas? Do we want to --

5 MS. MARTINCIC: I would like to have that because
6 then maybe we can get EPA to put something together
7 faster, and then DEQ doesn't have the resources to
8 actually go out and do it, then at least we can have a
9 presentation maybe that's created and that I can
10 distribute to my membership and maybe we can get it out to
11 some of the other trade associations to distribute.

12 CHAIRPERSON CLEMENT: So basically your
13 recommendation -- I just want to be clear about what your
14 recommendation is, that either we or DEQ and/or EPA create
15 an outreach program that includes both a handout kind of
16 thing and a meeting kind of portion or --

17 MS. MARTINCIC: I'd recommend that a presentation
18 be developed to better inform the regulated community
19 about financial responsibility requirements and the impact
20 of the impending phaseout of the SAF in Arizona, and that
21 the outreach take place in the next year before -- it
22 really ideally should happen in the next six months
23 because people renewing their policies and things, that's
24 going on continually depending on when they --

25 CHAIRPERSON CLEMENT: And that outreach could

1 take the form of a road show, it could take the form of an
2 e-mail distribution, it could take the form of a number of
3 different techniques.

4 MS. MARTINCIC: Right. Right. Really, I see all
5 of the above. Have a couple of meetings, if you can, you
6 know, do that, and then create maybe some kind of a
7 trifold or something that could be left with folks or sent
8 to folks who have questions and, you know --

9 CHAIRPERSON CLEMENT: Okay. Any other discussion
10 on that recommendation or clarity? Does DEQ need
11 additional information or direction?

12 MR. MC NEELY: Yes. I'd say, I mean, we all
13 agree that this is probably not a bad thing. We are doing
14 outreach right now. EPA is more than willing to help. We
15 just haven't given them the exact task of what that help
16 would be.

17 So we can make a recommendation. The question
18 goes back, who's doing what and who's writing it and who's
19 doing the outreach. That's the type of stuff I thought
20 the recommendation would include, like two outreach
21 meetings here and there, or one in Phoenix, one in Tucson
22 in the fall or January. Have EPA come out, maybe Meet The
23 Consultants Day we have in October. I'm not sure.

24 I think we all agree that this is a good thing.
25 The details haven't been worked out.

1 CHAIRPERSON CLEMENT: How about this, then: Our
2 recommendation is that Andrea, myself, Ron, yourself, sit
3 down and we work out the specifics. I think we all agree
4 outreach is necessary. And that our recommendation be
5 that we take the time in the next month to sit down
6 together and work out the details. Any input from the
7 regulated community, maybe we do this at the July 7th
8 meeting, would that be sufficient, because that's not too
9 far away.

10 We invite the regulated community to be there
11 because you know your stakeholders, you know the best ways
12 to get information to them, you know. We want to take
13 this on in a very comprehensive manner, so our
14 recommendation is we get the specifics out at the July 7th
15 meeting. I don't think we need a vote on that in any way,
16 the specifics we don't need to vote on.

17 Do we need to vote on this recommendation as a
18 Commission now? I don't think so.

19 MR. GILL: Sounds like you just set a meeting.

20 CHAIRPERSON CLEMENT: But we are making a formal
21 recommendation to DEQ with the details to be decided on
22 July 7th.

23 So, Tamara -- Ms. Huddleston, do we need --

24 MS. HUDDLESTON: If it's an action item, yes.

25 CHAIRPERSON CLEMENT: Is there a motion that the

1 Policy Commission will recommend outreach efforts to DEQ
2 to address the financial responsibility insurance issues
3 which will be decided in more detail, specifically on July
4 7th? Is there a motion for that recommendation?

5 MS. MARTINCIC: I will get that out of the
6 Financial Subcommittee.

7 CHAIRPERSON CLEMENT: Is there a second?

8 MR. O'HARA: Second.

9 CHAIRPERSON CLEMENT: Mr. O'Hara. All in favor?

10 (Chorus of ayes.)

11 CHAIRPERSON CLEMENT: Any opposed?

12 (No response.)

13 MS. MARTINCIC: The July 7th, we will work out
14 the details.

15 CHAIRPERSON CLEMENT: And really, people, please
16 participate because you know how you can reach your
17 stakeholders better than we do, so anything you can add is
18 going to be very, very helpful.

19 I'm going to take just one minute. I've got a
20 general comment from Mr. Bunch. I think it was from a
21 previous agenda item, but what I'm trying to do at this
22 meeting, since we have so many detailed agenda items, is
23 we are going to take public comment after each agenda item
24 rather than at the very end.

25 So, Mr. Brunch, you had a comment, I think, from

1 a previous agenda item.

2 MR. BUNCH: Actually, the agenda item that Andrea
3 actually surfaced, and I appreciate, Andrea, I'm really
4 glad you brought it up, and, Mike, I'm glad you certainly
5 expanded on it, and I'm trying to understand the scope of
6 the review.

7 And I agree that the urgent issue right now is to
8 insure that people can comply with FR requirements. But
9 what I would like to encourage the Commission to consider
10 is evaluating the long-term impact of 1306, knowing that
11 we first need to get people compliant, maybe look at an
12 alternate to those folks who can't get insurance, because
13 part of this process is going to be weeding out those that
14 may have a problem getting it.

15 But I would like to see the Commission look at
16 the long-term impact to the transition of private
17 insurance from the Fund, and maybe set up some measurable
18 semetrics to look at, that we have people going out of
19 business. Having seen insurance behavior firsthand from
20 industry side, I think it would be interesting for us to
21 look at within the realm of confidentiality and whatnot,
22 but are people being paid on claims, are we seeing more or
23 less releases reported, what is the ultimate impact,
24 long-term impact, so, moving forward, we have a better
25 understanding of the real impact at 1306.

1 And part of that might be looking at other states
2 that have already gone through this transition and really
3 try to get to the real story behind what's going on in
4 those states, the ultimate impact, not only to the
5 regulated community, but to soil and groundwater quality.

6 CHAIRPERSON CLEMENT: Thank you.

7 MR. BUNCH: You are welcome.

8 CHAIRPERSON CLEMENT: Let's take a quick break
9 and then we're going to jump into what is probably why
10 most of you are all here.

11 (A recess was taken at 10:03 a.m.; resumed at
12 10:15 a.m.)

13 CHAIRPERSON CLEMENT: The next agenda item is the
14 Technical Subcommittee update. Mr. Gill is going to chair
15 that discussion, and he is the Technical Subcommittee
16 chairperson. The first -- and these are the two very
17 critical agenda items on this agenda.

18 The first is the cost schedule discussion and
19 we're also going to vote as a Policy Commission on a
20 recommendation for Mr. Gill, and as everybody recalls, the
21 cost schedule has to be in place according to statute by
22 July 1st, 2005.

23 I see somebody nodding their head in a different
24 direction, but that's my understanding at this point.

25 Okay. Mr. Gill.

1 MR. GILL: Thank you, Madam Chair.

2 First off, I'd like to thank ADEQ and all the
3 stakeholders that came to the two meetings that we had
4 this month, the Technical Subcommittee. I think we had a
5 very productive meeting at both meetings. A lot was
6 accomplished. We had a lot of good discussion, and those
7 of you that have had a chance to review the discussion
8 issues and recommendations/solutions can basically see
9 what we came up with.

10 And what I will do is just briefly go through the
11 discussion issue and what we felt came out of the
12 discussions as far as a recommendation or a solution, and
13 then see if there is -- if that's everybody's
14 understanding, and primarily DEQ's, to see if I got things
15 right when I was summarizing it.

16 Basically -- and rather than go -- I just want to
17 go through the discussion issues that I have listed on my
18 summary. There may be more that people, you know, want to
19 discuss or that they may remember that I missed. But
20 because of the time frame and wanting to get this done,
21 I'm going to limit it at this point to just what I have on
22 the summary sheet.

23 The first issue that we discussed -- the first
24 two were the biggest ones that we had discussions on. But
25 the first one dealt with a language in the general notes

1 that basically stated that all remedial installation costs
2 must be included in one application. There was a
3 discussion at the meeting that was past on to DEQ that
4 this would create financial burdens for most, if not all,
5 small and medium-sized owner/operators. And primarily
6 because the installation of a remedial system can
7 literally take months to a year and maybe more. It all
8 depends on permitting, it depends on when you can get your
9 equipment inspections by the city. It just goes on and on
10 and on. It isn't simple as just going out there and
11 putting in trenches and piping and there's your system
12 waiting for you. It really takes a long time. And it's
13 very costly. The trenching, 100,000 plus for a large
14 system, and so it can be just be very, very expensive.
15 And for a small owner/operator and for a mid-size
16 owner/operator to hold these costs while they're waiting
17 to get the entire system done is just financially
18 impossible for most of them.

19 So, that was basically the issue. And the
20 solution that came out of it is that DEQ agreed that the
21 cost did not have to be included in one application;
22 however, they requested, and it was agreed by the
23 stakeholders that were at the meeting, that when you send
24 in an application with remedial system installation costs
25 on it, that you tally up any previous applications that

1 you sent in so they can see what has already been done and
2 what you foresee the ultimate cost is going to be that you
3 are looking at right now. That way they see what's been
4 done, they see what this application is, and they know
5 where you are going and they can make a determination
6 whether it looks like you're on the right track as far as
7 the costs or -- you know, but that way they're not just
8 taking something -- an application that they have no idea
9 where it is in the scheme of the remedial installation.

10 That was basically the general recommendation and
11 solution that was agreed upon. Some of the points that
12 came out is that -- and I wasn't completely positive about
13 this when I was writing it up, because I didn't remember
14 it specifically, as far as DEQ would provide additional
15 language to define what activities are to be specifically
16 included in the cost-per-unit format, materials, mileage,
17 per diem in the final cost schedule. I'm not positive
18 what that -- what that dealt with, and I'm not sure if
19 that's accurate. I don't want to put language in DEQ's
20 mouth if that's not what they agreed upon, so if I can ask
21 them.

22 MS. ROSIE: Tara Rosie. You are correct.

23 MR. GILL: All right. Primarily what I wanted to
24 make sure is that the information that we were presenting
25 with the applications or with the tally was what you

1 needed to see to make the determination.

2 CHAIRPERSON CLEMENT: Before you go into the next
3 discussion issue, so, just to be clear, is DEQ going to
4 change the language in the general note regarding this
5 item so it's clear what people will be expected to be
6 based on what our understanding is?

7 MS. ROSIE: Yes.

8 CHAIRPERSON CLEMENT: When will that language be
9 available?

10 MR. MC NEELY: Before July 1st.

11 CHAIRPERSON CLEMENT: The language is not
12 prepared yet.

13 But there is no disagreement, everybody is in
14 agreement about this, there is no further discussion. As
15 long as the language changes are sufficient to clarify
16 that issue based on our understanding, there should be no
17 issue. Okay.

18 MR. GILL: Thank you.

19 CHAIRPERSON CLEMENT: Thank you.

20 MR. GILL: Move on to discussion item No. 2,
21 which was another huge one. Basically in the initial
22 document, it's a provision for equipment rental rate
23 provision regarding prorating monthly rentals if a system
24 is operating less than 75 percent per month.

25 Now, the primary reasons for this provision in

1 discussion with DEQ was that they did not want to pay the
2 full monthly rental cost for a piece of remedial equipment
3 that was basically a piece of junk. And so if it was
4 going down all the time, it was because it was not well
5 maintained or it really should have been replaced. And
6 there was no, no argument by the stakeholders at the
7 meeting with this at all. We all understand that, you
8 know, you want your system to run because ultimately
9 you're trying to remediate your site, and so if it's
10 operating, so we have no problem with that. The area of
11 discussion dealt primarily with, there are many other
12 instances where a system will go down or shut off, and I
13 listed several of them here, electrical brownouts --
14 Tempe's notorious for that -- high temperature shutdown.
15 Basically the system itself, if it has an influx of
16 hydrocarbons from the subsurface, it will really flare and
17 your system will automatically shut down, and just the
18 temperature outside itself will make it shut down.

19 Inadequate fuel supply. There are some areas in
20 the city where, if you are on a natural gas line, it
21 actually does not provide you the required pressure that
22 you need to control -- to keep the unit running and it
23 will shut down.

24 These systems are designed, the remedial units
25 are resigned to shut down if there is anything out of the

1 ordinary in their system operation, and it's always a
2 safety issue.

3 So, electrical storms -- and there is -- and also
4 it was brought up in the meeting, there is a number of
5 people that are either surging their system or their
6 system was designed, and the plan that was put in place is
7 I'm going to operate this for one or two weeks a month,
8 then I'm off two weeks, or whatever. If you are out there
9 doing your annual sampling, or something like that, it
10 will be off for a time period, but there is numerous
11 instances where the system will be shut off or just shuts
12 itself off.

13 And DEQ understood that, and I think the solution
14 that we came up with is the first thing, the paragraph
15 language would be changed from "will" to "may be prorated
16 based on the amount of time the equipment is operated for
17 that month."

18 And again, the DEQ requested, and this was agreed
19 to and there was no problem with this provision of it, is
20 that if your system is operating less than 75 percent,
21 when you turn in your application, you provide an
22 explanation for the reasons that it went down and the
23 reason you were below that 75 percent.

24 And then also in my -- and I wanted to run this
25 by DEQ to make sure that this was accurate in the way that

1 they were determining the amount of reimbursement, and
2 that's the last sentence of my recommendation solution is
3 basically, you basically take the time of operation for
4 your system divided by the 75 percent to come up with a
5 reversal. Is that what DEQ looks at?

6 MR. MC NEELY: No. That's not actually how our
7 understanding of the 75 percent. The 75 percent was,
8 above 75 percent, we don't look, because we know there is
9 going to be issues. Below that we want to look. But if
10 we decide it was shut down because the equipment was not
11 working, we are not going to pay, you know, 99 percent.
12 We're going to pay 74 percent of it. The 75 percent was
13 not a payment thing. It was more of a -- we're giving you
14 a week leeway to actually keep your system running.

15 Once you get below that, we are going to look
16 closer, and if we look closer and decided it was not
17 appropriate why it was shut down, then you don't get paid
18 the extra 25 percent. It's more of a trigger point to
19 look at more closely.

20 So, the way you have it written, you could have
21 equipment that's completely shut down, that's not
22 operational, and it has a blower on it, we are going to
23 have to pay 25 percent of it, it looks like, which doesn't
24 make sense to us.

25 CHAIRPERSON CLEMENT: So, let me just repeat.

1 Let me make sure I'm clear. If you've got a system and
2 for either planned or unplanned circumstances it operates
3 75 percent or more of a given calendar month, those
4 payments will go out just like they always do for the
5 rentals and everything else.

6 If, for either planned or unplanned
7 circumstances, the system operates less than 75 percent,
8 DEQ is going to take a look at that application and
9 determine whether it should be paid based on a prorated
10 amount or based on the 100 percent.

11 Okay. Then the next thing is, if it's going to
12 being paid based on a prorated amount, it will be paid
13 according to the actual percentage of time it operated in
14 the calendar month. Is that correct? Is that last
15 statement correct?

16 MR. MC NEELY: Correct.

17 CHAIRPERSON CLEMENT: Okay. That's where you are
18 at right now.

19 If someone submits an application where the
20 system was non-operational for more than 25 percent of the
21 time, they will have to provide DEQ an explanation of why
22 that occurred, and then DEQ will evaluate that explanation
23 to determine whether payment should be at 100 percent or
24 at a prorated amount. That's correct; right?

25 MR. MC NEELY: Correct.

1 CHAIRPERSON CLEMENT: That's where we're at.

2 Okay. I just wanted to reiterate what I thought
3 the situation was.

4 Any discussion about that? Any further comments?

5 MR. GILL: Well, I understand all that. I still
6 see this causing a real problem, because, first off, I
7 don't know that DEQ has the personnel with the experience
8 to review all the reasons that come in technical reasons.

9 And I'm my concern is that, first off, we have no
10 -- I know what -- further discussion was should we provide
11 a list of the types of reasons for the systems going down,
12 so at least we are on the same page as far as what we're
13 looking at for reasons, because what if it goes down six
14 times in a month and DEQ accepts three of them and doesn't
15 accept three of them, how do you determine the
16 reimbursement. I mean --

17 MR. MC NEELY: The problem with the 75 percent is
18 we have an issue with 75 percent or without 75 percent.
19 75 percent is a cutoff that we don't have to look at the
20 top 25. So, regarding our personnel, if they're qualified
21 or not, that doesn't matter, we have to do it regardless
22 if they are or not. We have to look and make a reasonable
23 and necessary judgment whether we pay or not; so, taking
24 the 75 percent off, we're going to do it on every
25 application 95 percent of time, or leaving it in, are we

1 going to do it below 75 percent of the time.

2 So, I'm not sure the situations you are talking
3 about, why would we pay or not pay, we are going to do
4 that with that number or not. We could take the number
5 out. We're more than willing to do that. I think it's
6 for everyone's benefit to leave it in there, personally,
7 at 75 percent.

8 CHAIRPERSON CLEMENT: The 75 percent is the
9 benchmark that nobody cares about, basically, if they're
10 above it. And typically, other than the planned off's and
11 on's that are part of the cycling operation of SVU'S, take
12 the plans away, what about the unplanneds, I mean, is this
13 going to affect a large number of systems that are in
14 place?

15 MR. GILL: Absolutely.

16 MR. MC NEELY: This is what we're doing now. We
17 look at -- every time we get an application, we look now
18 to see if it was reasonable that it ran at 28 percent or
19 50 or 10 O&M visits. We didn't really change. We're
20 trying to make it more clear, we're trying to make it
21 easier, basically. But all these issues you are bringing
22 up are issues we are dealing with today, last week, last
23 year, they're no different.

24 And what we don't want to say is it's okay
25 because Mesa has power surges, and every application they

1 can have power surges, so it runs at 50 percent 12 months
2 a year now. We are going to need a little bit more
3 information like why, what's going on here.

4 CHAIRPERSON CLEMENT: Okay.

5 MR. GILL: I guess what I'd recommend is we
6 probably need to have one of the subcommittee meetings
7 that are -- probably right away -- where we sit down and
8 come up with the type of language that is required to go
9 along with each one of these outages. I mean, because
10 right now, like I said, I don't know what they're turning
11 in, but I know the reasons for the systems going down, and
12 I don't know what, if anything, is being turned in.
13 Probably not, because this is the first discussion on
14 this.

15 But we probably need to come up with something
16 that is going to satisfy DEQ SAF as an explanation for the
17 specifics that we're talking about. Because I still -- my
18 question really didn't deal with 75 percent. The question
19 dealt with the explanations that come in, if DEQ accepts
20 half of them, how do you determine the reimbursement? I
21 mean, in other words, it's running 60 percent of the time,
22 and I just don't understand how you are going to come up
23 with that, what you are going to reimburse.

24 If it's running 60 percent of the time, but three
25 of the explanations you agreed with, three of them you

1 denied or you need more information, how do you come up
2 with what you are going to reimburse.

3 That's why I thought -- and I thought this
4 formula, whatever you want to call it, was discussed at
5 the meeting.

6 CHAIRPERSON CLEMENT: Ms. Gaylord had another
7 comment.

8 MS. GAYLORD: Just a question, if I could. Am I
9 correct in assuming that what DEQ is looking for is
10 contractor negligence, that all of these other
11 explanations, if they're reasonable, are not going to be a
12 problem, but that you are really looking for the
13 contractor who knew the equipment was broken, didn't go
14 out and fix it, or the contractor who was informed that
15 there was a power outage and didn't go out and turn the
16 equipment back on for a week, is that what you are really
17 trying to identify as the circumstance where you would not
18 reimburse for the time that the equipment doesn't operate?

19 MR. MC NEELY: Yes. One circumstance would be
20 equipment is not -- the language we have is it's not
21 operational. It can't be operated because it doesn't have
22 a piece of equipment on it that it needs. We don't want
23 to be paying for those, period, until it gets fixed.

24 And then the second scenario is, it is
25 operational, and then all the stuff that Hal described,

1 power surges, you know, slugs coming through that knock
2 off the high temps, things like that, those are the ones
3 that are harder. I think everyone agrees if you don't
4 have a blower or something on it, we're not going to be
5 paying for it. But that comes from professional judgment
6 and how much documentation, but we had huge discussions on
7 this about a contractor can keep this thing running if
8 they send someone there every day to keep it running, but
9 then it's not cost effective to drive four hours to keep
10 it running. So, it gets gray, and that's why you need
11 professional judgement, you have an explanation why it
12 didn't run. You know, if you have a planned visit next
13 week, you go visit another site, and the other site may be
14 way better to wait a few days or week. So that's what we
15 need, and we can't make that determination just by looking
16 at a number, so we are asking what's the explanation, and
17 we will try to be reasonable and look at them and see how
18 it goes. We need that now, though, that's the issue.

19 CHAIRPERSON CLEMENT: Can I ask a question? If
20 my explanation was, I've got a site up at Holbrook and
21 I've got another site at Holbrook, and I just got notice
22 that my system went down but I'm scheduled to go up there
23 in four days or in another seven days, and I don't want to
24 get a second O&M trip, so I'm going to wait until I'm
25 scheduled to go up there to do both systems, that would be

1 an adequate explanation or would that be an inadequate
2 explanation? Would that work?

3 MR. MC NEELY: I think it's close. It has to be
4 cost effective, too, if it was next door.

5 CHAIRPERSON CLEMENT: Well, yes, to go next door.

6 MR. MC NEELY: That's a full day of driving for
7 somebody, and that's why, add that into your travel time,
8 that would probably cost you a thousand bucks to drive up
9 and back, so it's probably more cost effective if you wait
10 a few days; 72 percent or 69 percent.

11 MR. GILL: That was the other part of the issue
12 that made it difficult is that, even when you know it's
13 down by telemetry system telling you the system's down,
14 you just can't run out -- or, well, you can, but, I mean,
15 you need to determine do I want to run right out and turn
16 it on again, because it's in Parker, or do I want to wait
17 until a scheduled meeting time to go out there. And it is
18 not a simple issue, but I think we really do need to sit
19 down and come up with adequate explanations that DEQ is
20 going to agree that the schedule, it looks like it would
21 be adequate for particular instances.

22 There is obviously going to be things like this,
23 which I guess you could -- we could write up something for
24 that, and that would make sense if it's more cost
25 effective to wait until another time frame or something

1 like that. But --

2 CHAIRPERSON CLEMENT: Mr. McNeely, you look like
3 you're ready to --

4 MR. MC NEELY: Just one thing. Our staff, we're
5 completely overloaded with work. We're not going to take
6 on writing explanations that you guys can use. I think in
7 your meetings, if you are going to have them, I think it's
8 a good idea to have remediation meetings and we can come
9 up with recommendations and language, and we will look at
10 that, but we don't want to be generating that ourselves.
11 Because I personally think it's very site specific and
12 it's going to be a professional judgment on a lot of these
13 sites.

14 MR. GILL: We had already -- I think, one of the
15 consultants at the meeting provided a list of eight
16 reasons, so I think that -- we can -- the consulting
17 community can easily come up with a list of reasons and
18 run it by DEQ to see if they have any problems with it.

19 But I just think -- I mean, I see -- every time
20 something goes into effect, I see there is going to be a
21 bunch of appeals, and it happens every time, because,
22 remember, all rules are basically designed and written
23 from this point forward, but this system doesn't stop, our
24 program keeps on rolling over everything, so it's going to
25 cause problems.

1 CHAIRPERSON CLEMENT: This is going to -- what I
2 understand Mr. McNeely saying, and I just say it again
3 because I want to be sure that I'm correct, right now
4 anything less than 100 percent, they're already looking
5 at, so -- right?

6 MR. MC NEELY: Right.

7 CHAIRPERSON CLEMENT: And to see whether it
8 should be paid 100 percent. So, right now what this does
9 is that maybe we can save them some burden and maybe the
10 regulated community burden by a 75 percent benchmark, and
11 then if we can come up with some codes or some typical
12 explanations that are sufficient, then it should maybe
13 eventually streamline the evaluation. I don't --

14 MR. GILL: I guess the one thing we do need is
15 DEQ integrating to change the "will" to "may".

16 MR. MC NEELY: We're doing that.

17 CHAIRPERSON CLEMENT: So that language change is
18 agreed. So the only outstanding issue that, based on
19 going full circle in this conversation, is that the
20 Technical Subcommittee has -- tell me if this is correct
21 -- has agreed to sit down and come up with a list of
22 explanations and massage this issue a little bit more
23 through the Technical Subcommittee to help the regulated
24 community in their explanations to DEQ when the system is
25 not operating at 75 percent or above?

1 MR. GILL: I think we can do that.

2 MR. MC NEELY: And in addition to that, not just
3 a list, but the issue is how you can document it, too.
4 That's what the concern is, what documentation do you guys
5 want provide to us, I think is what you want to talk about
6 also.

7 MR. GILL: Yes, that's true, because there are
8 some things that there is no way to document. You know
9 your system shuts down, it may tell you it's a high
10 temperature, it may tell -- actually, I don't think --
11 well, they're all different, there is so many units out
12 there. It may or may not tell you that it was an electric
13 -- well, it don't tell you if its an electrical supply.
14 It just shuts down. You know just because of the time of
15 year, but it doesn't tell you.

16 CHAIRPERSON CLEMENT: But that level of detail, I
17 think if you take it to the Technical Subcommittee, you
18 will get to see the presentation in the meeting from both
19 the technical and the SAF side because we need to have
20 that input.

21 If people don't object on the Commission, what
22 I'd like to do is take public comment after each of these
23 issues, because otherwise we are going to lose track of
24 them, so I did see there were some hands raised on this
25 issue, and I believe it's Mr. Vannais, and if you wouldn't

1 mind filling out a slip for me. Thank you.

2 MR. VANNAIS: For the record, Leon Vannais with
3 TR Dynamic. We're having a problem dealing with this
4 policy being applied right now. We've been running
5 remediation systems. I've never seen a denial like this
6 before in the three years that I've been doing it for TR
7 Dynamic, and the problem is, the prorated based upon run
8 time, unless your data recorders have been set up to tell
9 you the beginning of the month to the end of the month
10 what your operational run time is, then you don't have
11 that data and neither does DEQ. We just don't have the
12 data to support that kind of analysis.

13 So, perspective, now that we know that we have
14 to supply this data, we can reprogram our data recorders
15 and our data log lists to provide that kind of
16 information. But for months past, we just can't do it. I
17 don't know how we're going to be able to address it
18 because, you know, it's July 14th to June 28th. We got a
19 run time analysis for construction efficiency.

20 Also, this -- every site is different. Every
21 site is site specific. You can see the uncertainty going
22 around the room when we're talking about specific events
23 that may be considered to be reasonable by the SAF Rule
24 reimbursement. Every time we talk about something like
25 this, it's going to make an appeal on every single month

1 that every single system operates, and we're remediating
2 sites right now. You are talking about a lot of appeals.
3 I think this issue has to be better vented before it gets
4 inputted.

5 I just wanted to point out one other thing, and I
6 know this may not be a popular position. Senate Bill 1306
7 says on July 1st the cost schedules applicable to your
8 application is based on the date that you submit it. It
9 does not say that a cost schedule must be created on July
10 1st and implemented. We can use 2005 cost ceilings that
11 are in effect right now out as far into the future as we
12 need to get this document, this cost schedule accurate.
13 The only difference is, instead of my date work performed,
14 my contract work when I'm preparing my claim, I'm just
15 using the cost schedule that's effective on the date I'm
16 actually submitting the claim.

17 I really don't see the rush. I think there are
18 too many problems with the application, with the forms,
19 with the phase codes, with technical issues that are like
20 this, that are going to be rushed through and implemented
21 July 1st. It's going to be a nightmare for everybody
22 involved; the ADEQ, the regulated community and their
23 consultants.

24 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais.

25 Any other public comments on this issue? Okay.

1 MR. GILL: I would like to -- I guess to respond
2 to Mr. Vannais' comment, I guess -- if this -- you are
3 saying it's being done right now. The issue that we're
4 talking about right here is being evaluated right now, and
5 from Mr. Vannais' comment, it is, but I think the key
6 thing that he said is that -- and this is absolutely true,
7 and again because this is being put in place and the
8 language changes are being put in place with this forward,
9 it causes real problems for the ones that are already
10 being submitted and, you know, if you have no way to
11 provide the data as he said.

12 So, what can be done to address that? I mean,
13 these units are limited in what they can do, they're --
14 you know, some units have had telemetry put on from the
15 beginning. Unfortunately, Arizona burns them up so they
16 don't last, so a lot of units don't have telemetry, based
17 on going out there, based on what your work plan says or
18 preapproval, if you have that, or what your work plan,
19 what your reimbursement says, so there is a lot of things
20 in place already that do not match and will not provide
21 information that is required from even this point forward.
22 And I don't know how we're going to address that.
23 Because, like Leon said, and I agree, there is going to be
24 a bunch of appeals, and that's what we don't want.

25 I mean, they may be resolved, but it's still a

1 process that takes everybody's time, because they are
2 going to be denied and appealed.

3 So, I guess I'm saying I don't have a whole lot
4 of problem with what we're presenting from this point
5 forward, but there are lots of problems that are going to
6 be created because the programs are going to keep rolling
7 along with the old stuff in place.

8 CHAIRPERSON CLEMENT: I do have a question
9 regarding that. I've operated these systems and some
10 systems do have very sophisticated telemetry. Some
11 systems don't.

12 What are you going to do if your system doesn't
13 give you the information in terms of hours of operation?
14 Are they going to have to go back and retrofit those
15 symptoms now and will the State pay for that or how will
16 that be handled?

17 MR. MC NEELY: How do we handle it now? I don't
18 know. There is all this discussion. We are not changing
19 what we are doing. We're just putting a 75 percent in.
20 We could take it out and we are doing the same thing, so
21 this is all discussion. We are doing this now, we got a
22 formal hearing over nothing for not paying for systems.

23 MS. NAVARRETE: You might take it into
24 consideration that all preapprovals that have already been
25 submitted and approved prior to July 1st, those direct

1 pays will be -- applications will be done just like this,
2 so it's only going forward with reimbursements and
3 preapprovals that are approved after July 1st, so there is
4 some time in there, and the reimbursements, I don't think,
5 are going to affect that many volunteers or small
6 owner/operators because they usually don't carry their own
7 costs.

8 MS. ROSIE: If I may comment.

9 CHAIRPERSON CLEMENT: Yes, please.

10 MS. ROSIE: The intent of this was to limit the
11 number of appeals. Most of the appeals that we have now
12 have to do with systems that aren't operating for the full
13 month or because we have very limited information on why
14 that system was not operational. And the intent was that
15 it provide a format and the kind of information on how we
16 do the reviews, so that when you are preparing the
17 application, you can give us the information up front so
18 we have something to evaluate.

19 We're trying to approve as much as we can. The
20 problem is, if there is nothing there that tells us
21 anything about why something happened, there is nothing
22 for us to evaluate.

23 CHAIRPERSON CLEMENT: All right. Okay.

24 MR. GILL: Another comment?

25 CHAIRPERSON CLEMENT: Mr. Vannais has a second

1 document on this issue.

2 MR. VANNAIS: I have to disagree that this has
3 always been done. I mean, I've got a lot of experience in
4 this program. On occasion I know that if the system's
5 been down or not operating for a couple of weeks, there
6 has been denials involved. It's not been something that's
7 been applied across the board.

8 If the DEQ could tell us what they want in
9 advance, we've never been able to get anything from the
10 SAF saying this is the supporting documentation that we
11 need in order review your claims.

12 Is it a monthly log, daily log from start of the
13 shutdown, from day one to day three. This is the type of
14 thing that we're more than willing to give, but we've got
15 to know beforehand. That's why these appeals keep on
16 going on. We are not allowed to provide reports except on
17 a semiannual or annual basis, so the SAF has nothing to
18 review in the LUST files to support this.

19 We don't get paid for producing reports that are
20 not required by rule so that the owner/operator or the
21 applicant is going to have to be paying a consultant for
22 something that is not reimbursable by SAF just to get
23 their valid costs reimbursed on a timely basis, so that's
24 my comment.

25 CHAIRPERSON CLEMENT: I think we've got the issue

1 down. I think we've got some potential solutions of them.

2 We've got a time limit with Andrea's time, and I
3 know she wants to vote on some of these issues.

4 MS. MARTINCIC: I've got a flight at eleven. I
5 have got to leave at eleven, but if you set up a phone, I
6 could call in on my cell phone.

7 CHAIRPERSON CLEMENT: I think the next three
8 should be quick.

9 MR. GILL: Discussion on three, the only -- I
10 believe in the -- we did not -- in the subcommittee
11 meeting, we did not go into discussing the individual cost
12 schedule item codes or costs because there was no changes
13 made to the 2005 existing cost ceilings. But there was
14 one addition, that was equipment rates, which was schedule
15 item codes 20 through 32, and the only comments that we
16 had in there was basically equipment rental rate may be
17 higher than listed, and one example was especially for
18 generator costs. What should the owner/operator do if the
19 rental costs are higher than the listed SAF cost schedule.

20 Another comment that I got over the Internet was
21 expendable materials should at least be reported at cost,
22 and it mentions page 1 of the cost schedule, cost schedule
23 28-7831, which talks about disposable bailers. This one
24 consultant said they buy all their bailers in bulk, and a
25 1.6 inch bailer is 6.31, if you buy it as a case; it's

1 9.25 if you buy it individually. The cost schedule is
2 \$5.00. And so even if you buy -- and this goes on for a
3 number of these. If you buy things in bulk, it's still
4 higher than the cost schedule, so you can see we've
5 already got problems, and this is just when we're trying
6 to get lower costs efficiencies by buying things in bulk.

7 So, this -- and I don't know that we really came
8 up with an -- actually another example here was the well
9 vaults. The cities require certain -- and ADOT requires
10 certain well vaults and they're \$100 more than the ones
11 listed in the cost schedule. That's Code No. 60.

12 So, you can see there is already examples that
13 would be denied automatically, because it's in excess of
14 the cost rate, so what can we do -- and I don't think we
15 reached a resolution. We brought the issues up but we
16 never really came up with a solution.

17 CHAIRPERSON CLEMENT: And I think this is the
18 same as No. 4, basically, which is, if your rentals are
19 out of inventory, they're going to go up.

20 MR. GILL: Well, that's a little different.
21 That's based on a number of days.

22 CHAIRPERSON CLEMENT: Oh okay.

23 MR. GILL: For rental.

24 CHAIRPERSON CLEMENT: Got it. Sorry.

25 MR. GILL: But what can we do if -- here's

1 examples of right today, this is what things cost.

2 MR. MC NEELY: Well, just to answer some of that,
3 the well vault, we didn't change any of that costs.
4 That's been there. We really weren't planning on changing
5 current costs. We can do that down the road. It will
6 take more time, I think, to actually come up with prices.

7 But the equipment rates, we wanted to throw that
8 in there because everybody uses equipment, we get that
9 every application, and we wanted to have a number so it
10 could be easy to review. And two comments, one was the
11 generator was too low. And we did call around, and I
12 think the highest we found was \$65. We are willing to
13 push that up to 80. I'm not sure why you think it's too
14 low, because everywhere we called, even called up in the
15 rural areas, and they were 65, I think was the maximum
16 found.

17 And then we were going to raise one interface
18 from 58 to 60, just to make it a round number. All the
19 other numbers we thought were way high average in terms of
20 rental, and most companies own their interphase probe,
21 their water level indicator. These are small items.
22 Generator I know is a bigger item. A lot of people have
23 to rent that, but these are things that, in general, if
24 you have to rent it, and it costs more, I don't think this
25 is going to be a common practice. You don't have this

1 equipment going there. We're not here to cover every
2 scenario. I think this would cover most of the scenarios.

3 CHAIRPERSON CLEMENT: If we find a situation, or
4 Hal finds -- Mr. Gill finds a situation where their cost
5 is really not representative of a reality cost, there is a
6 mechanism by noting that to the agency, that you may
7 change that cost then, or is it a site-specific case or
8 how do you deal with that? How are we going to deal with
9 that?

10 MR. MC NEELY: You are saying you have an invoice
11 that says, hey, I rented it, it cost me \$100 and I want my
12 \$100. And that's the -- how do we handle that?

13 MS. ROSIE: If it exceeds the cost schedule item
14 number, the amount is denied.

15 MR. GILL: That's why to me this is not
16 acceptable. Because I understand that these rates -- and
17 that's why I had no problem when I read them, because if
18 you basically own your own equipment and you are renting
19 it as part of the program, this pretty much covers, and
20 that's why I looked at this. But if you -- if all of your
21 equipment is being used, and you have a project come in
22 where you need to move on it right away and you have to go
23 rent and it ends up being higher than this, you know, you
24 are stuck.

25 And, that's why to me it makes sense, why it's

1 either the cost ceiling or the receipt of the rental.

2 CHAIRPERSON CLEMENT: Mr. O'Hara.

3 MR. O'HARA: Historically, these cost ceilings
4 have been guidelines, and I don't think there is any
5 statutory requirement that says if it is over an amount,
6 you can't pay it. In fact, going back years, they were
7 called guidelines, and if you had a circumstance where
8 your cost exceeded the cost ceiling, all you had to do is
9 provide an explanation as to why it exceeded, and they
10 would evaluate that for reasonable and necessary. You say
11 you can't do it, and yet you are still doing it.

12 MS. ROSIE: No. The statutory amounts is in
13 excess of the cost.

14 CHAIRPERSON CLEMENT: What's your citation?

15 MS. ROSIE: I'm looking under 49-1054(C). The
16 department shall pay the costs that are associated with a
17 given task that do not exceed the amount for that task in
18 the applicable cost schedule.

19 MR. O'HARA: It must have changed.

20 MS. ROSIE: I think it did change.

21 CHAIRPERSON CLEMENT: This is an issue.

22 MR. MC NEELY: But I would say it's really not a
23 major issue. I mean, if it happens at every single site,
24 the cost ceiling is too low, but if it's one out of 200,
25 you have to rush off and rent something, all right.

1 That's part of the cost, but there is a lot of inflation
2 in all the other costs in terms of hourly rate.

3 MS. MARTINCIC: I think if it immediately is
4 denied then and goes to appeal, if it's over, I mean, I
5 think we could potentially see a lot more appeals.

6 MR. MC NEELY: Then we would probably have to
7 raise the cost ceilings down the road.

8 MS. MARTINCIC: Yeah, but then that ties up DEQ's
9 time and staff on appeals when you got all these other
10 things.

11 MR. MC NEELY: What happens, though, is we have
12 these costs, and let's say you shoot them up 50 percent
13 just to handle one in a million case, then everyone rents
14 their own equipment to themselves at the maximum cost, so
15 we're inflating our costs 50 percent. That's what happens
16 over and over, and that's why the auditors said, quit
17 doing that, make it reasonable. We call all the rental
18 places. These are the high average. We even bumped a few
19 of them above the highest rate we found. That seems very
20 reasonable to me. And if there is an issue that pops up
21 over and over again, then maybe these numbers weren't
22 correct and we need to readjust our numbers to be higher,
23 and I think we can do that.

24 CHAIRPERSON CLEMENT: Ms. Martincic.

25 MS. MARTINCIC: I guess, and I'm short on time,

1 so I want to make sure I say this on the record that, you
2 know, I think the agency's known since 1306 passed over a
3 year ago that they had to have a cost schedule in place by
4 July 1st, and I just find that it was inappropriate to
5 release that two weeks before it has to be in place,
6 especially when, as we are going through this, it does
7 appear that there are outstanding issues that are going to
8 impact all parties. And I just think that it was sort of
9 unfortunate that we didn't have more time to discuss these
10 issues. And I just am afraid that in the longrun we're
11 going to see more appeals, more problems, and I just want
12 to be on the record as saying that I think that it was
13 inadequate time for folks to come on board with all of
14 this, and for discussion and to be able to make changes or
15 contemplate this. We didn't see who you called to get
16 these. I mean, I don't know that that was ever released
17 to the stakeholders to look over it and feel comfortable
18 with it.

19 CHAIRPERSON CLEMENT: I understand your concern.
20 DEQ's also under a time gun. I mean, I think they've been
21 working diligently on a lot of different things. It's
22 unfortunate we have this time crunch and we don't have
23 more time.

24 This issue -- I think the only way this issue is
25 going to get resolved fully is that the consultant

1 community look at these numbers, and anything that seems
2 egregious or out of place, put a list together, and at the
3 Technical Subcommittee we will address it formally through
4 that, but I don't think at this stage of the game we can
5 hold it up because there might be five costs out of, I
6 don't know how many zillion that are here, that aren't
7 sufficient. So, that would be my suggestion that we put
8 this on the Technical Subcommittee and the consultant
9 community and the owners and operators to give us numbers
10 if these are not sufficient cost schedule numbers.

11 MR. MC NEELY: And I would say, if you're
12 submitting a cost and it is above it and you actually have
13 an invoice from a rental place, I would submit that so
14 that we have it documented, that maybe we need to look
15 closer at this cost. But if it's your own generated cost,
16 from your own consultant company, that I rent my own
17 equipment, that doesn't do anything for us.

18 CHAIRPERSON CLEMENT: I can understand that
19 position.

20 Any other comments or discussion? Okay.

21 MR. GILL: All right. Go to discussion Item No.
22 4, which also dealt with equipment rental rates, and
23 basically it dealt with, a lot of the LUST sites are out
24 of Phoenix, so whether it's your own piece of equipment,
25 that's what the out of inventory means, or you have to go

1 rent it, it will take you the bigger part of a day to
2 reach the site, whether it's in the far southeast or Yuma
3 or Parker or Holbrook. And so basically the way it's been
4 done in the past is that when you turn in your
5 application, you're only reimbursed the rental rate for
6 the day that it was in the field, the day that it was
7 actually on site being used, but you may have had it for
8 three days because it took you a day to go up there and a
9 day to come back or you may have got back after 5 o'clock
10 and you couldn't turn it in to the rental equipment
11 company.

12 So, this was an issue, too. It's not out of
13 design that you can't -- you know, that you couldn't turn
14 it in or that you got it for two more days than it was
15 actually being applied in the field, but it is a rental
16 cost to you, whether it's out of your own inventory or
17 whether you rented, because when it's out of inventory of
18 your own, that means it can't be used for another project
19 and you have several projects ongoing at the same time.

20 So, this was an issue. And as I said in the
21 recommendation solution, it was agreed that an explanation
22 in the SAF application should be added if rental exceeds
23 the number of field days, and the DEQ will consider the
24 payment of rental price if reasonable and the equipment
25 was necessary in the field, but not necessarily utilized.

1 Is that DEQ's understanding?

2 MR. MC NEELY: This is not a new issue.

3 CHAIRPERSON CLEMENT: That seems pretty
4 self-explanatory. Let's move on to the next issue.

5 MR. GILL: The No. 5, report section needs to
6 include reports not required by ADEQ, such as air quality
7 reports. And I don't know what -- that was all I had, and
8 I don't really remember discussion.

9 MS. NAVARRETE: Those are required.

10 MS. MARTINCIC: They are or aren't?

11 MS. ROSIE: If I might clarify. I think the
12 concern is that general note item number was specific to
13 the required ADEQ UST Corrective Action Section required
14 reporting, and we agreed to extend or reference in there
15 that there are other reports that you may be required to
16 do associated with your corrective action that might be
17 air reports, it might be discharge reports, and those
18 would be reports that can be submitted with time and
19 materials detailed for us.

20 CHAIRPERSON CLEMENT: And that clarification in
21 the general note will be added in the language before July
22 1st?

23 MS. ROSIE: Correct.

24 CHAIRPERSON CLEMENT: Okay. Well, those were the
25 discussion items that we've pulled together as a

1 subcommittee, and again I want to compliment Hal and
2 Andrea and the others, and Theresa and Jon participated.

3 I would like to take a vote on whether we
4 recommend approval as a policy for the new cost schedule
5 with these discussion items and changes as we've
6 discussed.

7 Okay. Is there a motion? This is a little
8 awkward because we don't have real tight language here.
9 So the motion that I'm proposing is that we as a Policy
10 Commission approve the cost schedule with the agreed-upon
11 changes with the DEQ, and the subsequent technical meeting
12 that we're going to have to address two issues: Any
13 pricing that appears out of line, and the second, a list
14 of those things which would be put together to explain why
15 a remediation system is non-operational for 100 percent of
16 the time. Those are two things that we were still going
17 to massage in the Technical Subcommittee.

18 Is there -- and there may be like a vault cost,
19 if the vault's been changed, et cetera, so there may be a
20 few other things.

21 Is there a second on that motion?

22 Ms. Foster?

23 MS. FOSTER: I will second it.

24 CHAIRPERSON CLEMENT: Is there a discussion, any
25 discussion?

1 CHAIRPERSON CLEMENT: Mr. McNeely.

2 MR. MC NEELY: The discussion is, it should be
3 limited to what we discussed here. If you open it up to
4 -- it could be the whole cost schedule.

5 CHAIRPERSON CLEMENT: Well, I think that we have
6 opened that up. Let me just be clear. I think what we
7 said, and correct me if I am wrong here, but I think what
8 we said is we were going to take the next Technical
9 Subcommittee and ask the owners and operators and the
10 consultants to look at these costs very clearly and
11 identify any that are out-of-bounds or that will not be
12 realistic. I think the only ones that people have come up
13 with were related to rental and apparently the bailer
14 price and the well heads, but maybe something else comes
15 in. I don't know.

16 MR. MC NEELY: Because that's -- for DEQ, that's
17 basically redoing the cost schedule and that's what we're
18 going to pass. That's what we're trying to do is punt and
19 do that later because that's a big long process.

20 CHAIRPERSON CLEMENT: But this will be helpful to
21 you in the interim. I don't think we can get approval
22 from the Commission unless we address costs that seem not
23 to be in place.

24 MR. MC NEELY: I guess the solution is you
25 present costs, but there is no action required. We can

1 accumulate this and see what happens down the road, I
2 guess, and see how bad they are. If you want to redo the
3 cost schedule at a certain point down the road, move it up
4 rather than push it out.

5 CHAIRPERSON CLEMENT: How do people feel about
6 that?

7 MS. MARTINCIC: I want to be on the record that I
8 just think this was an inappropriate process. I really
9 do. I feel railroaded on the thing, and, you know, we had
10 two meetings within a span of two weeks, basically a week
11 before it has to be in place, and I think it's
12 unfortunate. So, if, you know -- it sounds like we -- it
13 sounds like we have to have a vote on this, but in a way
14 it doesn't really matter if we vote on it because DEQ is
15 moving forward with the cost schedule regardless. And so
16 I just wanted to be on the record that ATMA is not real
17 happy with this process of the cost schedule, and also
18 with the application because we do feel, and I'm not going
19 to -- unfortunately I won't be here for that discussion,
20 but ATMA feels that some of the SAF Rules, proposed SAF
21 Rule is being put in place through this new application,
22 and that's unacceptable in our minds.

23 So, you know, we're going to take a vote, I
24 guess, on this cost schedule, I don't know. People who
25 weren't at those meetings, how do you feel?

1 CHAIRPERSON CLEMENT: Mr. McNeely.

2 MS. MARTINCIC: Mike wasn't at the meeting.

3 MR. MC NEELY: We've been on the record twice.
4 We did not change the cost. That's why we didn't change
5 the cost because we didn't have time.

6 MS. MARTINCIC: The schedule has been changed and
7 people have to implement that.

8 MR. MC NEELY: But we added 14 rental things that
9 we see all the time in every application. We wanted to
10 make it easier. All the other discussion was preexisting
11 issues.

12 MS. MARTINCIC: Okay.

13 CHAIRPERSON CLEMENT: Mr. O'Hara, do you have any
14 comment?

15 MR. O'HARA: You know, I just would like to see a
16 completely surveyed cost ceiling structure. I know that
17 was the intent of the Department. I know we had time and
18 resource constraints, but that's what we really need is a
19 new cost ceiling, that is, input from the stakeholders so
20 everybody is on the same page.

21 CHAIRPERSON CLEMENT: Where do we go from here?
22 What do you think?

23 MR. O'HARA: If it's going to be put in place, it
24 looks like, we can either approve it or chose not to
25 approve it.

1 CHAIRPERSON CLEMENT: I think we've got a little
2 more clout. This is the Commission talking to the
3 Commission if we approve it with conditions, then if we
4 just say we don't like any of this and we don't approve
5 it.

6 And so that's what I'm pushing for is that if we
7 spend the time through a Technical Subcommittee coming up
8 with some costs that are out of line, I think that the
9 agency needs to respond to that in a timely manner, not
10 some point in time into the future where you decide what
11 that is, otherwise, I don't think you are going to get
12 approval today from us.

13 MR. O'HARA: I think that they have the
14 discretion to change individual items whenever they feel
15 the need.

16 CHAIRPERSON CLEMENT: Okay.

17 MR. O'HARA: I think the statute was written and
18 they had to do it at least annually, they had to update
19 them. They could at any point in time make adjustments if
20 they felt appropriate.

21 CHAIRPERSON CLEMENT: Would it be more
22 problematic from your perspective, Mike, if they changed
23 some individual items that are out of place now or they
24 waited until a full cost schedule evaluation was
25 completed?

1 MR. O'HARA: If they see a mistake, they should
2 probably fix it immediately.

3 CHAIRPERSON CLEMENT: Okay.

4 MR. MC NEELY: But I would say that we just can't
5 change them at will. It would have to go through some
6 process, and I would say you guys would vote it on it
7 again. That's what I'm saying, redoing a process down the
8 road. If you go through that process -- I mean, we can't
9 change it, it would be a new cost schedule. We were
10 planning on doing that down the road and actually having
11 the whole thing done.

12 CHAIRPERSON CLEMENT: I know where you are at.
13 It's just that we got to address some real concerns, I
14 think in the interim. We can't wait until the perfect
15 thing is available.

16 Ms. Gaylord.

17 MS. GAYLORD: I guess I'm interested in Phil's
18 view that the full Commission would have to vote. I
19 wonder if that's really true. If the Technical
20 Subcommittee identified some errors that DEQ agreed were
21 errors, such as this bailer costs, which appears to be an
22 interesting issue to me, it seems to me that perhaps if
23 the Technical Subcommittees identifies some specific costs
24 that should be changed now while we have this opportunity
25 and DEQ sees the information regarding the cost and says,

1 yeah, it appears that those costs are out of whack, I'm
2 wondering why we need a Commission vote on that. Why DEQ
3 couldn't take the opportunity to correct those specific
4 costs.

5 MR. MC NEELY: If you feel DEQ has the authority
6 to correct it, that's fine. In the past we've always
7 pretty much gone through the Commission for
8 recommendations, given 30 days.

9 MS. GAYLORD: I guess to clarify my question, my
10 question was whether the Technical Subcommittee doesn't
11 act for the Commission when the Commission specifically
12 authorizes it to do so. We don't seem to have much time
13 here, but it seems that what our Chairperson is saying is
14 that in this circumstances, she feels the Commission would
15 authorize the Technical Subcommittee to go forward and
16 identify which ones could be changed at this point in
17 time.

18 CHAIRPERSON CLEMENT: I think that's the best
19 we're going to get out of today's meeting.

20 MR. MC NEELY: Okay.

21 MS. MARTINCIC: You are saying before July 1?

22 CHAIRPERSON CLEMENT: Well, no, it will have to
23 be at the July -- whatever the next July meeting is.

24 MS. MARTINCIC: The problem with that, then, is
25 that DEQ is going to have it in place, this, July 1, and

1 then we're going to be asking the regulated community to
2 possibly then make more changes.

3 CHAIRPERSON CLEMENT: That's right, in reality.
4 That's the reality that we're in.

5 MR. MC NEELY: We're talking about dollar
6 amounts, not really changing. It's not the change so
7 much. You get reimbursed for the costs.

8 MS. MARTINCIC: They will have to make the
9 initial changes now in this cost schedule, then it would
10 be a tweaking of the number.

11 I will second the motion that we approve the cost
12 schedule with the conditions that the Technical
13 Subcommittee will reevaluate the discussion points, which
14 are still unresolved at this time, that we're discussing
15 at this meeting.

16 CHAIRPERSON CLEMENT: The two things which
17 basically we got, the remediation systems and then the
18 cost schedules, the costs themselves that are out of line.

19 All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: All opposed.

22 MR. GILL: No, and I will explain. I agree
23 completely with Andrea's comments before, this was rammed
24 down our throat. We had no time to review it. We have
25 good meetings, but there is obviously lots of issues and

1 every one of these are not all resolved. I just -- and I
2 just think we should have had more time to do it.

3 CHAIRPERSON CLEMENT: Okay.

4 MR. GILL: And it's going to create problems and
5 the whole purpose of our Commission is to make the program
6 work better, and I just see denials and appeals coming in
7 by the drove.

8 CHAIRPERSON CLEMENT: I think we're between a
9 rock and a hard place, and I think we've made a vote, and
10 I appreciate Hal - Mr. Gill's time on this. He's really
11 been really making an effort, and I appreciate the
12 regulated community's participation. Okay.

13 We had a vote. You know what I'm going to do is
14 after this meeting, I'm going to write up an e-mail and,
15 you know, reiterate what that vote was so that we're all
16 clear, and I captured it in my notes and in my discussion
17 so that there is not a lot of uncertainty, because it was
18 a little mushy.

19 The next agenda item, which frankly, I think, is
20 a very, very significant one, and it's the applications --

21 Thank you, Andrea, have a good trip.

22 -- is the applications themselves. And in this
23 situation there isn't the same time frame, so I'm going to
24 turn this back over to Mr. Gill, please.

25 MR. GILL: Okay. And here I just listed the

1 issues. I'm not sure that any solutions or
2 recommendations were made in the meetings, but they just
3 stand alone. And I'd basically like DEQ to respond to
4 them, you know, if they can, as we read each one of them.

5 Basically, the first one was certification
6 statements -- these are in the applications -- appear to
7 be broader than required by statute. The recommendation
8 was revise certification statements to use precise
9 statutory language, and tell me what DEQ is --

10 MR. MC NEELY: And we talked about that at the
11 meeting. All we're asking for, if we are requested,
12 provide the contract that you are paying for the 10
13 percent.

14 MS. ROSIE: With the agreement.

15 MR. MC NEELY: To implement the statute.

16 MS. NAVARRETE: And that is the statute.

17 CHAIRPERSON CLEMENT: I think actually that's the
18 second agenda item. The first agenda item is that
19 supposedly -- and I'm not an attorney -- that the
20 certification statements that are in the variety of places
21 in the various applications go beyond the actual statutory
22 language that people are required to certify to.

23 And I'm not -- and I've heard this from a number
24 of people -- I'm not the attorney reviewing this, though.
25 And that's the issue. Is that something that DEQ agrees

1 with or is that something that DEQ disagrees with, that
2 the statements themselves are not the exact statutory
3 language?

4 MR. GILL: Why can't we use the --

5 CHAIRPERSON CLEMENT: Ms. Navarrete.

6 MS. NAVARRETE: We're having the Attorney
7 General's office review those.

8 CHAIRPERSON CLEMENT: So that is under legal
9 review by the AG.

10 MR. MC NEELY: And they are not the exact
11 language, we agree with. That's very clear. We are
12 adding -- if you are certifying that you are going to
13 submit the contract if we ask for it and approve that
14 there is a co-payment.

15 We're not asking for it; only at the request of
16 DEQ.

17 CHAIRPERSON CLEMENT: So the first issue is that
18 the AG's office is under legal review about the actual
19 language.

20 MR. GILL: That goes into the second one, because
21 basically the concerns of the regulated public was that by
22 providing the documents that you just mentioned to showing
23 that the co-pay is being -- what the co-pay agreement is,
24 may be a confidential document and the regulated public is
25 concerned about whether DEQ is keeping this information

1 confidential, and you said that you would research the
2 confidentiality issue.

3 Has there been any movement on that, or --

4 MR. MC NEELY: No. And I said we will try to
5 keep it confidential. If you say it's confidential, we
6 will try to keep it confidential. If someone does a
7 public records request, then it may not be confidential,
8 so that's what we got to make sure of and that's another
9 issue, are contracts confidential.

10 MR. GILL: I guess I remember when the financial
11 information that is provided is kept in a different file,
12 why can't these same things be kept in that file?

13 CHAIRPERSON CLEMENT: This is not a compliance
14 confidentiality. It's a business confidentiality question
15 that we had in the Technical Subcommittee, and does DEQ
16 have a broad -- or does UST have a broad business
17 confidentiality provision, and do they follow it and can
18 those records be maintained confidential, and that's a
19 clear legal question.

20 MR. GILL: I think "try to keep them
21 confidential" isn't adequate. These things are being
22 provided for the life of this program. The financial
23 statements have been provided understanding that this is
24 indeed going to be kept confidential.

25 MR. O'HARA: Hal, that wasn't an understanding,

1 that was specific. When you submitted your financials, it
2 would be maintained confidential by the State, and it says
3 in the statute. I think what you are talking about is, is
4 it subject to public records.

5 MR. GILL: That's the issue. I mean, these are
6 -- scenarios isn't the right word, but basically different
7 companies have ways that they go about doing business, and
8 this is something they do not want out to every other
9 company that wants to come in and look at it.

10 CHAIRPERSON CLEMENT: I know that I just recently
11 negotiated an order of the EPA, and they have a business
12 confidentiality provision in their orders under CERCLA.
13 Is there such a thing in WQARF or other --

14 MS. FOSTER: I would defer to the AG's office,
15 but from general knowledge, I know that many of the EPA
16 statutes do contain specific provisions authorizing EPA to
17 protect information, and if we don't have a specific
18 provision authorizing protection of general business
19 information, I wonder whether the AG's office can find
20 that authority in some general language.

21 MS. HUDDLESTON: Well, number one, there are
22 certain environmental statutes that provide for business
23 trade secrets to be kept confidential. Whether it's
24 applicable to UST, I can't say right now. This is under
25 review by my office, and whatever would, of course, be

1 confidential, and we won't give it to them.

2 CHAIRPERSON CLEMENT: And then they will have to
3 let us know what they want us to know.

4 Okay. So, basically the bottom line is we don't
5 know. None of our varied expertise up here knows, and
6 it's under legal review and we may probably hear from DEQ
7 after the legal opinion is rendered. Okay.

8 MR. GILL: Okay. The application issue, No. 3
9 was certification statements, limited resubmittals, and
10 this was a huge discussion in the meeting that went on for
11 an hour plus, two hours, actually. It was a complex issue
12 because multiple circumstances were identified that would
13 require resubmittal of costs that are no fault of the
14 owner/operator.

15 The suggestions were to consider waiting for the
16 final rule, which addresses recent -- ADEQ may consider
17 one-time resubmittals for unpaid, unlitigated, and
18 unnegotiated costs. And I think the main thing that came
19 out of this discussion was it would be worthwhile holding
20 up the applications while this is continued, because this
21 is a huge issue that resubmittals on applications, and
22 again, I don't know what DEQ ultimately decided.

23 MR. MC NEELY: On resubmittals, one issue that we
24 talked about at this subcommittee meeting was reports, and
25 that seems to be a -- could be a reoccurring common issue,

1 where someone submits a report, we can't pay for it unless
2 it's actually approved, and then if we deny that, the
3 issue was, you have to keep appealing until this report
4 gets reviewed.

5 So, we've talked about writing language in the
6 recertification. We've talked about the waiver of
7 reports, except for submitted reports, then you could --
8 and what we were thinking about doing is, when we deny
9 costs, we will say these costs are denied, you don't have
10 to resubmit. They are denied, and when the report gets
11 approved, you will get payment. So it's almost like a --
12 it's even better than resubmitting. Once your request
13 gets approved, the report gets approved.

14 In terms of resubmittals, you know, this
15 information was an item I want to resubmit it, we are
16 still standing fast. We just think that's not right. We
17 want you to do an informal appeal if you feel like you
18 need to get on that application, because we never, ever
19 finish with an application. We always have to go back and
20 start looking back, why it was denied six months ago or
21 three months ago. So, once you do the application, if
22 there is issues, an informal appeal doesn't cost anyone
23 anything. Once it goes to formal, it can get more
24 expensive. An informal appeal, you can talk to us,
25 provide information, then we can pay upfront rather than

1 waiting six months or five months to accumulate all these
2 things and then we have to go back and pull all these
3 files. That is not efficient. We will never get out of
4 the hole with that process.

5 CHAIRPERSON CLEMENT: You are just asking for a
6 whole lot more informal appeals, I think. But, you know,
7 there were so many cases in the Technical Subcommittee
8 where people came and provided information regarding when
9 a submittal would have to be redone, or reissued, and I
10 just don't think you are going to capture the universe of
11 them and prevent yourself from having a lot of informal
12 appeals.

13 Any other -- I mean, this is to me, besides the
14 certification statement, this is the key issue on any of
15 this right now.

16 Any other discussion or questions or comments on
17 this?

18 MR. GILL: I guess the other thing I'm seeing
19 here as another big issue right now that is being
20 discussed is that the consultants are seeing one hour, two
21 hours, three hours per activity being denied on level of
22 effort. And this ends up being \$1500, which is not cost
23 effective to go after a full appeal, and this happens on
24 every application. This was what that last statement
25 dealt with, is that a lot of consultants -- okay, I can

1 argue this, but I'm not going to spend \$10,000 to argue
2 for 1500, and I think I can argue it and win.

3 So, what this last statement dealt with was
4 saving these up until you had \$10,000 to go after and
5 argue, and that was what the -- that last statement in No.
6 3 dealt with, but this is happening every day. And it was
7 a big issue that was brought up at the subcommittee
8 meeting.

9 Judy.

10 MS. NAVARRETE: Well, the certification statement
11 is more lenient than the one they are signing now, because
12 this one -- the new one says after administrative remedies
13 have been exhausted. That means that those costs that you
14 are resubmitting have gone through appeal and they have
15 been denied. They have gone through all the adjudication
16 process.

17 Now, you are asking us to go ahead and let those
18 come back in after a judge has said no or a technical
19 appeals panel has said no?

20 MR. GILL: No.

21 MS. NAVARRETE: That's what the recertification
22 statement is saying now, and you want us to change that.

23 MR. GILL: No. Basically what I'm saying is they
24 are not going through the adjudication process because
25 it's \$1500, and even though they know they could or they

1 believe they can win if they take it, it's not cost
2 effective to take that forward, so they don't.

3 MS. NAVARRETE: On the informal appeals, if they
4 give us the information to approve those costs, we're
5 going to approve it.

6 MR. GILL: How do you --

7 MS. NAVARRETE: But if there is strictly --

8 MR. GILL: What I'm talking about is the level of
9 effort. What is the proof -- it shouldn't have taken
10 three hours to do this, it should have taken one. Or
11 shouldn't have taken two hours, it should have taken -- or
12 two. What documentation do you provide to say this is
13 what it took to do this. It took me six hours to do a
14 disposal of carbon and go through all the process with the
15 phone calls and dealing with the company disposal. This
16 is an example.

17 There is no way to show it took me six hours to
18 do this. You know, and that's what we're seeing, level of
19 effort every time on every application. But most times
20 there is no way to say, well, this is what it took me to
21 do this. And it ends up being \$1500 or 2000, or whatever,
22 or 500 on an application or an activity.

23 And while we're saying it is not -- that they --
24 at this point it's not cost effective to go forward with
25 that, I would like to wait, and when I en masse 10,000 of

1 these, which I'm going to, then it's cost effective to
2 appeal that. That's what I'm saying. It hasn't gone
3 through the adjudication process.

4 CHAIRPERSON CLEMENT: Phil explained to us in the
5 Technical Subcommittee that there are three circumstances.
6 One is informal appeal, formal appeal, decision. There is
7 a decision of the cost. Okay. The second one is a
8 settlement agreement between the two parties where there
9 is a decision, and everybody agreed to it. Neither of
10 those cases would resubmittals be allowed. That's seems
11 pretty self-explanatory. If either a judge made a
12 decision or both parties made a decision, you can't go
13 back on those unless you are going to Superior Court,
14 which is the other legal process.

15 But the third case is where, for whatever reason,
16 an owner, an operator or consultant didn't appeal through
17 the informal appeals process costs that were not paid and
18 they save them up over time because it's more efficient
19 and cost effective to do it that way.

20 That's the umbrella of stuff that people are
21 concerned about. And there are so many circumstances,
22 that in the Technical Subcommittee meeting where you can
23 get a denial for a variety of reasons, paperwork hasn't
24 caught up, the improvements haven't caught up, whatever,
25 but there's going to be a lot of circumstances that fit

1 into that third category, so that's what we're addressing
2 or trying to address.

3 MR. MC NEELY: And I would also say that when we
4 are saying resubmittals aren't allowed, you can always use
5 the appeal process, and what we're planning on still, if
6 we deny them, you have formal appeal rights on it.

7 CHAIRPERSON CLEMENT: Well, this is definitely an
8 issue I think that for Policy Commission and the regulated
9 community, and we're looking forward to your new language
10 and some clarity on how you are going to deal with this.
11 I don't have anything else on it.

12 Any other comments or questions?

13 MR. O'HARA: Real quick.

14 CHAIRPERSON CLEMENT: Mr. O'Hara.

15 MR. O'HARA: Remember, the issue is going to be
16 dealt with in the SAF Rules, correct? We'll have the
17 opportunity for public comment. Are you saying that this
18 is now being already put forth in the new application
19 before the rules become effective? Is that what I'm
20 hearing?

21 CHAIRPERSON CLEMENT: There are folks that
22 believe that that's what's happening.

23 MR. O'HARA: Do you agree with that? Does DEQ
24 agree with that?

25 MS. NAVARRETE: The certification statement has a

1 statement in there now.

2 MR. MC NEELY: We have a service provider
3 statement that says do not resubmit any calls. That's
4 one.

5 We've had attorneys at the AG's office say that
6 just because you didn't appeal a decision doesn't mean you
7 didn't exhaust your administrative remedies, so, we've
8 been talking about this since last October saying you
9 really can't resubmit, and it's very clear in the rules
10 you can't do it. I think it's very clear in the service
11 provider statement that you can't do it, and we feel like
12 we shouldn't be doing it, allowing resubmittals.

13 And I've been talking about it and saying, don't
14 do it. I'm not sure if we've been catching them, because
15 we have no way to catch them, unless we go through it,
16 it's sort of difficult to catch this stuff. So we've been
17 sort of lenient, not really looking for resubmittals but
18 at the same time we want to stop them.

19 MR. O'HARA: The question is, if the SAF goes to
20 GRRRC, and there is enough public comment, then GRRRC says
21 this should be struck, will you then go back and change
22 those application forms?

23 MR. MC NEELY: If it's -- I don't know that
24 answer.

25 MR. O'HARA: Okay.

1 MR. MC NEELY: That's something we need to think
2 about.

3 CHAIRPERSON CLEMENT: Okay. I would like to take
4 a minute and ask any input from the general audience. I
5 saw a couple of hands raise. Mr. Trembly, and if you fill
6 out a form over there.

7 MR. TREMBLY: Jeff Trembly with Mogollon
8 Environmental Services.

9 I guess my feeling on resubmittals is that the
10 statutes say that the agencies shall pay for work that was
11 reasonable and necessary, cost effective and everything
12 else. If the agency has accepted the work that was done,
13 made scientific decisions based on that work, it doesn't
14 seem right to me not to deny the payment for that work
15 because it's inconvenient, and that's essentially what
16 it's coming down to, and so that's just my point of view.

17 CHAIRPERSON CLEMENT: Thank you.

18 Mr. Vannais?

19 MR. VANNAIS: Since 2000 and the implementation
20 of the database that SAF is currently using, every time an
21 invoice is submitted, the invoice number, provider name's
22 recorded, if that invoice and provider comes in in a
23 subsequent application, it throws a flag out so that
24 everybody knows that it's very obvious that there is a
25 duplicate invoice.

1 And, Tara, you are shaking your head. Is this
2 not happening anymore?

3 CHAIRPERSON CLEMENT: Why don't you finish.

4 MR. VANNAIS: Anyway, this is not a case of we
5 just kind of overlook this. It's been knowingly paid on
6 resubmitted invoices for the past five years. If you are
7 going to change it, then you do it through the correct
8 process, which is either substantive policy, rule making,
9 statute, and there is the procedures you have to follow
10 through in there. You can't circumvent that entire
11 process by forcing people to sign certifications. That's
12 just not fair.

13 I've also -- I didn't attend the last training
14 session of the SAF applications. There seems to be some
15 conflict about what people are being told in the training
16 sessions, which is, if you want us to resubmit an
17 application or an invoice, resubmit, provide an
18 explanation of why you think it should be re-evaluated,
19 and we will take it from there, and that's reasonable. I
20 think it's all anybody has ever asked for. Nobody should
21 be resubmitting invoices they have already gotten paid
22 for, but if there is a valid reason why this cost is now
23 reimbursable, that may be when the initial determination
24 was made on the initial claim, it wasn't reimbursable at
25 that point, it should be considered by the department.

1 It's just a reasonable approach to this situation.

2 And then finally, I just have a general question
3 about the cost schedule and the applications. People in
4 training apparently have been told that they don't need to
5 use the applications starting July 1st, for a number of
6 reasons. There is no electronic applications available.
7 This is too soon. People in the accounting system have to
8 be redone. But part of the cost schedule are these phase
9 codes, and the phase codes are -- we had activity codes,
10 now we are going to phase codes, 10 activity codes to 60
11 phase codes. Are they going to be required as of July
12 1st, because it's part of the cost schedule, or is that
13 going to be an optional thing?

14 I mean, I keep on hearing conflicting information
15 about how this program moves forward starting July 1st,
16 and I'd like to get some concrete answers here rather than
17 going to training. Because another thing I hear in
18 training is they are saying this application has been
19 approved by the UST Policy Commission, or it's been
20 reviewed by the UST Policy Commission. I don't think
21 anybody on the Commission or any people who have been
22 involved with the regulated community is happy about the
23 review time on this application or the cost schedules.
24 So, are we being told -- you are expressing in your
25 training sessions may not be what is actually the case,

1 and I think we need to get on sure footing here, we're
2 running out of time.

3 MS. ROSIE: If I may respond, I actually was at
4 the training session.

5 CHAIRPERSON CLEMENT: Please do respond.

6 MS. ROSIE: Tara Rosie, ADEQ. I will try to
7 catch all of Leon's comments.

8 First -- I guess I will start backwards. The
9 phase codes should be used with all applications received
10 after July 1st, unless it's a direct pay associated with
11 the preapproval, in which case the direct pay should
12 correspond with the preapproval.

13 As far as what was discussed in training about
14 accessing resubmittals with an explanation, we discussed
15 what was brought up by the regulated community to clarify
16 what their concerns were, and documented that there was no
17 agreement that the department accepted any of those
18 things. And we did take those back to Phil with a
19 discussion of what had occurred at the training. No one
20 was told at the training, resubmit, give a explanation,
21 and it will be fine.

22 Then to go back with Howard. Database operates
23 is catching resubmittals. Consultants submit invoices
24 with their applications. If the consultant uses the same
25 invoice to claim the same cost, then that consultant's ID

1 check with that invoice ID may show up as a duplicated
2 invoice on a report.

3 If the consultant claims the cost on a different
4 invoice number or includes subcontracted costs on a
5 subinvoice that was not identified as a separate invoice
6 in the worksheet prior to that, there is no way for us to
7 catch that with the database.

8 There are also situations where we've gone to
9 appeal and there is an agreement to allow someone to
10 resubmit costs on a future application. And that does
11 occur, and we process those as agreed upon.

12 CHAIRPERSON CLEMENT: Thank you. Any other
13 public comment on this issue? This is a huge issue, I
14 think.

15 Mr. Kelley.

16 MR. KELLEY: I give my slip to Al. Dan Kelley
17 with TR Dynamic Company.

18 I'd reiterate all of Leon's comments and your
19 comments, Madam Chairman, about this Item No. 3, the
20 certification statement, the resubmittals. So, not to
21 beat a dead horse, I'd just like to add one more time
22 thing on 2, which was the certification statements
23 requiring a copy of the 10 percent co-pay agreement. This
24 is not a issue with our firm because all of our co-pay
25 agreements are legally binding, signed documents, but I

1 know that there are verbal agreements that exist for this,
2 number one.

3 Number two, the statute specifically provides for
4 a preexisting agreement. It doesn't say a preexisting
5 written agreement, or whatever. So, what if you have a
6 verbal agreement? How can you provide a copy of that to
7 -- when requested under this certification? So, just keep
8 that in your brain when you are trying the figure out how
9 to resolve this.

10 CHAIRPERSON CLEMENT: Thank you. Let's move on.

11 MR. GILL: Okay. Issues 4 and 5 just dealt with
12 the electronic forms, and 4 says the DEQ may be able to
13 make forms available electronically. Their concern was
14 regarding altering forms by applicant, and that was
15 discussed, and that is a potential. But anyway, they're
16 looking at being able to make electronic forms available.

17 The electronic application submittals, DEQ is
18 still not prepared to accept electronic applications, so,
19 unfortunately, they still have to input all the data each
20 time they get an application. They hope these will in the
21 future, but with all the time frames and the crunches that
22 they're under, this is not a high priority, so I don't
23 know that there is really any issues for discussion there.

24 CHAIRPERSON CLEMENT: Let's move on.

25 MR. MC NEELY: And we are going to try to make

1 the forms electronically, maybe change the certification
2 statement a little bit saying that you didn't change the
3 certification statement or change something like that,
4 then signing it from the original form or something like
5 that.

6 CHAIRPERSON CLEMENT: Ms. Foster?

7 MS. FOSTER: Madam Chair, there's been a lot of
8 discussion on, well, people can change the form, but I
9 don't know of anyone right now who is taking a hard copy
10 of the form and typing it in. All your consultant
11 contractors are already converting it over electronically.
12 That risk has always been there the last, probably, ten
13 years, so it's no different with this new form as compared
14 to the old forms.

15 So, instead of all the consultants developing
16 their own electronic form, if we had one form and
17 everybody could use, it would save a lot of energy.

18 MR. MC NEELY: And we will find that out.

19 MR. GILL: Okay. Issue No. 6 just dealt with the
20 suggestion that because the applications are not required
21 by statute, there is no time limit. We are suggesting
22 that they be phased in over a 30 to 60 day period to allow
23 the consulting firms to update their accounting systems to
24 match the new forms, which was a big issue and takes a lot
25 of time, and also just to give the regulated public the

1 time to digest the new changes and hopefully help the
2 process along.

3 CHAIRPERSON CLEMENT: I think in addition there
4 are three outstanding legal issues that I see in this
5 that, until you have a legal decision from the Attorney
6 General's Office, and approved by DEQ, you are not going
7 to be able to finalize this. And from my perspective as
8 the Policy Commission Chair, I don't think until -- these
9 are substantive issues, they cannot be resolved in a
10 subcommittee. And I don't feel that as a Commission,
11 unless you all disagree, we can vote or approve any policy
12 related to these applications at this point in time until
13 we see the final legal decision and language that you are
14 going to use, both in terms of resubmittals and
15 certification statements. I just don't think we can.

16 MR. MC NEELY: I would like to say, all this
17 discussion is all on this certification statement,
18 resubmittals are on the recertification statement, so the
19 application is a pretty long application, and it seems
20 like it all came down to the last paragraph that,
21 certification statement.

22 So, we are planning on waiting until September
23 1st, 60 days transition time for this, and if the
24 application looks good, what I'd like to do is to get it
25 out to the public as soon as possible so they can actually

1 start using it, getting used to it. Since we have a
2 September 1st deadline, you need the applications
3 beforehand so you can actually fill them out and submit
4 them by for September 1st, so the certification would be
5 the wording to look at, so it sounds like there is really
6 not too many issues with the actual application, just the
7 certification statement.

8 CHAIRPERSON CLEMENT: At least not that we
9 received input from the regulated community. It's the
10 certification statement, and I don't think we have closure
11 on that to any degree that we can -- I would propose a
12 vote today.

13 So, if we could get those before the July
14 meeting, I think that would still give you plenty of time
15 or get them into the Technical Subcommittee or get them to
16 us as soon as you can, but, you know, we don't have enough
17 stuff here to vote on.

18 MR. MC NEELY: Yeah.

19 CHAIRPERSON CLEMENT: Unless you all disagree or
20 anyone wants to propose something different.

21 MR. MC NEELY: And I won't be here for the July
22 meeting.

23 CHAIRPERSON CLEMENT: But you will have a great
24 replacement.

25 Then Hal came up with two other issues since our

1 subcommittee meeting.

2 MR. GILL: These were sent into me by a
3 consultant, and I must admit that all of us in the
4 meetings missed these completely, especially the first
5 one.

6 The cost ceiling for travel was established for
7 the cost of gas at 97 cents. Now, I filled up yesterday
8 at 2.50. And so what the consultant told me is that
9 they're, basically for excavation costs, transportation
10 costs, they are being charged a surcharge for gasoline,
11 which is being denied when it's in a application because
12 the cost ceilings says \$2, and that's supposed to include
13 all of that.

14 So, this is just an issue that I wanted to bring
15 up and I think we need to look at it right away because I
16 don't see the gas prices dropping anytime soon, and it
17 does affect us all. I mean, I use a tank a week just
18 driving downtown.

19 CHAIRPERSON CLEMENT: So, that's something that
20 we could add as far as the costs that we are going to
21 discuss in the next Technical Subcommittee meeting, since
22 it's a cost? Can we add that to our discussion at that
23 meeting?

24 MR. GILL: Yeah, I guess we can. I think the
25 issue, the problem, as Phil has reiterated before, is that

1 this is a cost ceiling, and we have to go through the
2 process of resurveying everything for a change in cost
3 ceiling, so if that's not going to resolve this issue in a
4 timely manner --

5 CHAIRPERSON CLEMENT: I would propose that in the
6 next Technical Subcommittee those things that are really
7 what the regulated community feels is egregiously out of
8 line in terms of dollar amounts, we make a list of those,
9 we bring them back to DEQ and say, we would like you to
10 address these sooner rather than when you do your complete
11 survey for the cost schedule.

12 MR. MC NEELY: In terms of your dollar for the
13 miles, right now I think it says \$2 a mile. That is one
14 we got hammered by the auditors. What are you guys doing
15 with \$2 a mile, so, it's supposed to be 33 cents, or 36
16 cents, whatever that a mile is, what the feds pay, 38
17 cents.

18 MR. GILL: But that doesn't include time.

19 MR. MC NEELY: Right. I know. So we are saying
20 it's a dollar -- the penny goes up, it may be -- I can't
21 see going over the feds. You can always split it out, ask
22 us to do it for a mile, then we will just take that \$2 off
23 and put it to T & M for people. So that way, it's more
24 transparent to auditors and the outside, the newspapers
25 saying why are you paying \$2 a mile. That's hard to

1 explain. \$4 a mile, if you have two people, that's
2 something we could look at.

3 CHAIRPERSON CLEMENT: Well, I think that's
4 something we can take the time in the Technical
5 Subcommittee to lay out the issue and lay out various
6 options and what's reasonable. That doesn't seem to be
7 complicated.

8 Then the last point is the cost for the
9 preparations of the new applications.

10 MR. GILL: And I brought this up at the very
11 first meeting, but not doing the application anymore. I
12 didn't know, but I have actually heard from a couple of
13 consultants that have done dry runs, that it is indeed
14 taking them a lot longer, primarily because they have to
15 provide a lot of -- I guess the one real, real complaint
16 was that in the new phases, or what's the next objection,
17 where it breaks out the pre and post, I think that's a
18 good idea because it does identify an area where we have
19 had problems in the past by submitting a time that was
20 spent, a month, two weeks, four weeks, before time and the
21 same thing afterwards, it gives you a place to put it to
22 where DEQ understands where that came from. But this
23 indeed is going to take a lot more time up front in
24 management time, as well as more information you are going
25 to have to provide to show and document exactly where this

1 came from, and DEQ mentioned in the meetings, field notes
2 and things like that.

3 Well, first of all, personally I have a real
4 problem with field notes, because when you are in the
5 field you are writing down stuff and comments that you may
6 not want to be public information, problems with
7 contractors and that kind of stuff, and time -- you know,
8 just a bunch of little bitty things.

9 But it's all going to take a lot of time, before
10 and after and during a preparation of the application.
11 So, I think that's going to be an issue is the cost for
12 applications as well.

13 MR. MC NEELY: We're not asking anyone to change
14 their field notes. We wouldn't expect that or even your
15 invoices. That's up to you. We're asking you to convert
16 to our application, that's all, when you do it. So, I
17 assume UST is pretty much going to convert it to match our
18 invoices, and I personally think it's going to be pretty
19 quick once you get the whole format down.

20 CHAIRPERSON CLEMENT: I think that is something
21 we are going to have to flush out because nobody is doing
22 it except for a few people right now.

23 Any other comments? Let's move on because we're
24 running out of time.

25 The UST Policy Commission records retention

1 policy. I spoke with Victoria, and she punted and said
2 that perhaps the AG's office, through Tamara and through
3 Lori Woodall, could help us with this. She said that was
4 more of a Lori Woodall task; and basically two things, how
5 long do we need to keep records and is there, quote, a
6 policy we can adopt from someplace that's already there.
7 Do you know? Those are the two questions I had.

8 MS. HUDDLESTON: Okay.

9 CHAIRPERSON CLEMENT: And I was going to formally
10 ask you in this meeting if that would be acceptable for
11 you guys.

12 MS. HUDDLESTON: Would you e-mail that?

13 CHAIRPERSON CLEMENT: I will e-mail it, but she
14 came back to you guys.

15 MR. GILL: Madam Chair.

16 CHAIRPERSON CLEMENT: Yes.

17 MR. GILL: What records are we talking about?

18 CHAIRPERSON CLEMENT: All records. We have to
19 basically -- we should -- I don't know if we have to, but
20 we should have a formal position that everybody knows what
21 it is, and that it has a certain period of time associated
22 with it. And so I was trying to get that from the
23 Solicitor General's Office, and they don't have that and
24 she doesn't have the expertise to do that is what I was
25 told, and that would best handled by Lori Woodall through

1 Tamara Huddleston.

2 And the second question we had from last month's
3 meeting was, we could ask ADEQ's Al Johnston, you guys are
4 going to be responsible for actually retaining the records
5 that you're copied on or that originate from you or that
6 go to you, and you were going to say yes or no at this
7 meeting. And I think that's self-explanatory.

8 MR. MC NEELY: If it's our records, we should be
9 responsible to keep our records.

10 CHAIRPERSON CLEMENT: That's what I needed to
11 have from your guys.

12 So that's a yes. Okay. So all my e-mails I can
13 get rid of. That was it.

14 Okay. I'm going to make this very quick. The
15 agenda action items from the meeting. Let's see.

16 Phil will e-mail to the Commission the DEUR Rule
17 when it's available. Doesn't think it's a big issue.

18 Al and Phil will provide the 2004 metrics for the
19 annual report.

20 We're going to meet on July 7th with the
21 Financial Subcommittee in addition to the regular meeting.
22 We're going to come up with very specific recommendations
23 for owner and operator outreach regarding when, who, what,
24 when, where and how.

25 DEQ's going to come up with some additional

1 metrics regarding the list of tanks and their ages when
2 that becomes available. They're going to also massage
3 their inspection records to see if they are going to
4 provide some additional information that we can't get
5 through the full database until it's available.

6 We're going to meet in the Technical
7 Subcommittee. We're going to write remediation
8 circumstances. We're also going to put a list of costs
9 that may be out of line according to the current cost
10 schedule that will be implemented on July 1st.

11 I'm going to put together what I believe is our
12 summary of the vote that was very specific regarding the
13 cost schedule.

14 ADEQ is going to provide us the legal language
15 related to the certification statement on the new
16 applications as soon as it's available.

17 Those are the things that I captured. Any other
18 agenda items? Okay.

19 Next. General call to the public. Any other
20 public comments regarding the Policy Commission meeting or
21 any other items? Okay.

22 Next, the announcements. The next Policy
23 Commission meeting will be held on July 27th, 9 a.m. in
24 Room 250. There are so many items, I think, before this
25 Commission we're not going to have a summer recess. We're

1 going to have the July meeting.

2 The financial subcommittee meeting is July 7th.

3 That's going to be a pretty important meeting.

4 The Technical subcommittee meeting --

5 MR. GILL: July 13th.

6 CHAIRPERSON CLEMENT: And that's also going to be

7 a very important meeting. Really ask the regulated

8 community to participate. That's the only way we can get

9 our work done.

10 And with that, no further comments, the June

11 22nd, 2005 UST Policy Commission is adjourned. Thank you.

12 (11:49 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 120 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 22nd day of June, 2005.

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