

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
August 24, 2005
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

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COMMITTEE MEMBERS PRESENT:

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Hal Gill, Chairman
Jon Findley

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Philip McNeely

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Cynthia Campbell, Esq.

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Karen Gaylord

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Theresa Foster

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Barbara Pashkowski, Esq.

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Myron Smith

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

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3 CHAIRMAN GILL: I think we're all here. I would
4 like to call to order the Underground Storage Tank Policy
5 Commission August 24th, 2005 meeting, and we will start
6 with a roll call.

7 MS. CAMPBELL: Cynthia Campbell.

8 MS. PASHKOWSKI: Barbara Pashkowski.

9 MR. MC NEELY: Phil McNeely.

10 MR. SMITH: Myron Smith.

11 CHAIRMAN GILL: Hal Gill.

12 MS. GAYLORD: Karen Gaylord.

13 MR. FINDLEY: Jon Findley.

14 MS. FOSTER: Theresa Foster.

15 CHAIRMAN GILL: The next thing on the agenda is
16 approve the minutes for the July 2005 meeting. Did
17 everyone get a copy of the minutes and have a chance to
18 look at them?

19 Do we have a motion to approve them?

20 MR. SMITH: I move that we approve the minutes.

21 MS. FOSTER: I second it.

22 CHAIRMAN GILL: All in favor?

23 (A chorus of ayes.)

24 CHAIRMAN GILL: Opposed?

25 The ayes have it.

1 Okay. The next thing on the agenda, discussion
2 of rules affecting the UST program. Phil McNeely.

3 MR. MC NEELY: Thank you, Hal.

4 The SAF rules have been published with the
5 Secretary of State on August 12th. We have scheduled two
6 public hearings, one on September 21st in Phoenix and the
7 other public hearing is on the 22nd in Tucson. And the
8 public comment period stays open until September 30th, so
9 we will accept written comments up through September 30th.

10 We have a link on our web site. I will walk
11 through it quickly. If you go to ADEQ web site, home
12 page, go to key topics. If you look down at key topics,
13 look at tank programs, and then under tank programs it
14 says SAF rules. If you click on that, it will take you to
15 the Secretary of State web site, then you have to look for
16 proposed rules, and it's under Issue 33, August 12th
17 publication date. Just click on that, and then there is
18 three rule packets, and it's the second one, and click on
19 that and you will have the rules and you can print them
20 out.

21 MS. FOSTER: Phil, can the agency make it clear,
22 more easier for people to find it? I searched and I
23 couldn't find it.

24 MR. MC NEELY: Follow that direction I just gave.

25 MS. FOSTER: Can you put a link in there?

1 MR. MC NEELY: We do have a link, the Secretary
2 of State, then once you get to the Secretary of State, you
3 have to go through their little thing, unless Al wants to
4 send an e-mail.

5 CHAIRMAN GILL: Can you go through it one more
6 time?

7 MR. MC NEELY: You go to ADEQ. Then you go to
8 key topics, which is on our home page. Tank programs
9 division, then you will see SAF rules, click on that, and
10 that takes you out of DEQ's web page to Secretary of State
11 web page. Then they will have proposed rules. Click on
12 that. And then you'll see -- there is like three
13 different rules. One is ADEQ. Click on it. And you have
14 to go to Issue 33, August 12th. August 12th is the only
15 date up there. All the other dates aren't August 12th.
16 You will see it, it's right there. There is a list. You
17 click on that, then you will come up to three rule
18 packets, and you can just scroll down all the way through
19 them or you can click on the middle one and you will come
20 up to the DEQ rules. Then you can print it. You have to
21 mess around with it. It's not exactly easy, but that's
22 how you do it.

23 CHAIRMAN GILL: Okay.

24 MR. MC NEELY: So, there you have you it, and
25 that's the official rule. We're not passing them out,

1 just get them off the web site, the official rule packets.

2 And then the other Soil rules, we're still
3 considering revising those, and we will probably start
4 having public meetings in October. We've been working on
5 them, actually, for a couple of years trying to figure out
6 the technical issues in that rule packet. There is about
7 550 chemicals we're trying to update. It's a lot of
8 formulas, it's a lot of work, and we're getting to the
9 point now we're ready to get them to the public, probably
10 in October. That's all for the rules affecting the
11 program.

12 I will just jump right into the program update,
13 then to the SAF monthly update and cover it all.

14 The program updates. There is not a whole lot to
15 report on. We did hire two hydros in the last couple of
16 months, and Joe's Corrective Action Section, actually, got
17 one person from consulting, another person from Utah.
18 They're well-qualified and energetic and happy to be here.
19 We are trying to hire two more hydros up in the SAF for
20 technical review. One will be a Hydro 4 senior person,
21 registered geologist, and the other one will be a Hydro 3.
22 And in the meantime, we transferred temporarily two of our
23 hydros from Joe's section, Corrective Action Section, up
24 to the SAF Section to do technical review of claims.

25 Besides that, we're actually pretty well staffed

1 right now with a handful of positions.

2 Jump right into the SAF update. The SAF update,
3 if look in your packet, you can see we received 21
4 applications in July and reviewed 105, so we made pretty
5 good headway, knocking down the backlog, 84 difference.

6 We have a total number of applications 386
7 in-house, 231 are less than 90 days, 137 is greater than
8 90 days, and 18 is greater than 180 days. And most of
9 those, if you look, are reimbursements, so we are really
10 focusing pretty hard right now on credit in 90 days,
11 credit in 180 days, and like to get those completely
12 processed.

13 CHAIRMAN GILL: Al, did members get the packet
14 e-mailed this time? Because my e-mail was down so I don't
15 know.

16 MR. JOHNSON: Yes.

17 MR. MC NEELY: You don't have this? I've got a
18 color copy. All right.

19 So, 386 total number of applications. Do you see
20 that, Hal? And if you flip the page over, you can see the
21 breakdown, where they are in the staging area.

22 In terms of appeals, we had 38 informal appeal
23 requests in July received, we processed 41, which is
24 always a good sign, process more than you receive. We had
25 6 in July formal appeals requested, and we processed 10 in

1 terms of formal appeal determinations. So, in every
2 category we've actually processed more than we've
3 received.

4 Next month is not going to be the same. Next
5 month we're going to have about 284 appeals, formal
6 appeals next month, so expect that, it's coming. It's an
7 eligibility issue, one applicant.

8 That's all I have for the update. Any questions?

9 MS. CAMPBELL: Mr. McNeely, does this kind of
10 trickle down from the report we heard last month where we
11 had like a glut all of a sudden of applications from one
12 applicant? Are we trickling through the program, now
13 they're going through appeals?

14 MR. MC NEELY: Right. It's not a trickle down.
15 I think it's like a pouring, a flood.

16 MS. CAMPBELL: Okay.

17 MR. MC NEELY: We did final determinations on
18 about 284 applications. The applicant knew we were going
19 to do that. We knew we were going to do that. Now the
20 next process is to formally appeal it, so now we have 284
21 formal appeals. We didn't receive all of them yet. We
22 received 164 yesterday, the day before, and we are
23 expecting to receive the other 114 probably in the next
24 day or two.

25 MS. CAMPBELL: Are they the same issue?

1 MR. MC NEELY: Same issue, different
2 applications.

3 MS. CAMPBELL: Is there any way to consolidate
4 those appeals so you don't have to show five or six on the
5 same issues?

6 MS. PASHKOWSKI: Maybe, but there's not enough to
7 reduce resource needs. It's pretty horrendous.

8 MR. MC NEELY: Any questions, Hal?

9 CHAIRMAN GILL: Any questions by members?

10 Okay, then, the next is UST Corrective Action
11 Monthly Update, Joe Drosendahl.

12 MR. DROSENDAHL: My name is Joe Drosendahl. I'm
13 the section manager for the Corrective Action Section.

14 We did give you some numbers this month.
15 Basically we're still working to get the bugs out of our
16 new database and to develop adequate reporting and
17 everything, but these are numbers that we've been keeping,
18 you know, basically by hand, and, you know, these might be
19 plus or minus a few, but right now, you know, the total
20 number of reports that are in-house awaiting review is 39,
21 and they're broken out as follows.

22 There is probably more LUST case closure
23 requests. Those are being mostly handled by Al Johnson's
24 unit, and they've been definitely working hard at getting
25 as many closures out as possible, and they've been doing a

1 good job.

2 Some updates on the Corrective Action Section.
3 We're in the process of implementing case management
4 again, which is hopefully going to help both inside and
5 outside. We're not going to be managing all sites. We're
6 mainly going to be picking the real high risk sites, so we
7 hope to be implementing that as soon as possible.

8 The Route 66 Initiative, that is still ongoing.
9 Last night Bill Engstrom and Chiou Chen attended a meeting
10 of the City of Holbrook. I have no idea how that went. I
11 haven't talked to Bill yet, but hopefully, you know, that
12 went well, and they had just done one up in Winslow not
13 too long ago.

14 The Municipal Tank Closure Program is still
15 ongoing. Currently 73 USTs have been removed from the
16 ground, and that's within 20 cities throughout Arizona.

17 We're still working out the bugs of the Tier 2
18 software, and I definitely encourage people to, if they
19 find any kind of bugs or problems with the software, to
20 send Jeanene Hanley an e-mail, and we're trying to get all
21 the bugs worked out so it works more easily.

22 I think that's it for me.

23 CHAIRMAN GILL: Okay. Any questions on -- you do
24 have -- you handed out -- this is your report this time?

25 MR. DROSENDAHL: Yes.

1 CHAIRMAN GILL: Any questions? Actually my
2 question was, what does "in process" mean?

3 MR. DROSENDAHL: Basically some of those are
4 waiting for signatures, so basically the review is done.
5 It's just waiting for management's signature.

6 For the corrective action plans, majority of
7 those that are just awaiting the public comment period,
8 and there is a few reports that have been put on hold for
9 various reasons. I think there is just a few of those.
10 You know, I think one was whether it's within the
11 jurisdiction of the UST program.

12 CHAIRMAN GILL: Just a question on the corrective
13 action plans. Are you still looking at redoing the
14 requirements?

15 MR. DROSENDAHL: Yes. That's still ongoing.

16 CHAIRMAN GILL: Any idea?

17 MR. DROSENDAHL: Not at the present time.

18 CHAIRMAN GILL: Any questions?

19 Okay. Let's move on to Item No. 5, Financial
20 Subcommittee Update. Andrea Martincic is in Hawaii. She
21 was going to call in, and she called a couple of days ago
22 and said that their schedule had changed and she was not
23 going to be able to be near a phone.

24 So, I was at the meeting. We didn't discuss the
25 financial responsibility outreach, but we did start

1 looking at the SAF rules. There was still -- we had the
2 original list of concerns that the Policy Commission had
3 with the rule, and we're going to be meeting, the next
4 Technical Subcommittee meeting and the next Financial
5 Subcommittee meeting, I think the Financial Subcommittee
6 was on the 8th.

7 MR. MC NEELY: Yeah.

8 CHAIRMAN GILL: The 8th of September, and then
9 the subcommittee is on the 14th, I believe, the Technical
10 Subcommittee.

11 But I will get -- and we are basically discussing
12 these issues again, and we went through the list, and most
13 of them were -- had been addressed in the rewriting of the
14 SAF rule, but there were a few that still remained, and
15 those will be discussed in those two meetings if it's
16 necessary to use both the meetings, and that was basically
17 what took the entire meeting.

18 Any questions on Financial Subcommittee? And I
19 will get out the -- Andrea and I will get out the agendas
20 for the meeting prior to it taking place.

21 If no questions, I will move on to the Technical
22 Subcommittee. As I mentioned in the last Policy
23 Commission, what we did in the meeting is we sat down and
24 we just discussed what we wanted to get out of the
25 remediation program meeting that we're going to have. And

1 we came -- we took the old outline that I had put
2 together, which was really a general, a generic, an open
3 outline of topics for discussion. We discussed that. We
4 discussed who was going to be at the meeting from the
5 stakeholders and from the DEQ, just expressing the point
6 that it's extremely important that, you know, that DEQ
7 managers attended so they could pass the information on.

8 We also discussed how we were going to pass that
9 information on so that any discussions, any resolutions or
10 ideas or recommendations that came out of these
11 discussions were indeed passed on, not only to the
12 stakeholders but to DEQ personnel.

13 And so we're still working on the means to do
14 that, but we think it's critical that the appropriate
15 people attend these meetings and that the data that is
16 produced from the discussions be passed on to stakeholders
17 and DEQ.

18 And we were going -- I sent out the outline again
19 to the stakeholders, asked them to add to it. I added
20 some more detail that we came up with at the meeting, but
21 I asked them to look at it and add anything that they
22 could think of that they thought was important to discuss,
23 and then I'm waiting for any more comments.

24 We're basically going to try to discuss one to
25 two topics a meeting, and then the last 30 minutes will be

1 any current issues that are coming up that may be further
2 on in the discussion items but are happening right now so
3 we're not putting it off until, you know, towards the end
4 of the discussion period, which could be months away.

5 Unfortunately, because of the SAF rule, the first
6 meeting that we were going to have, which I think was the
7 14th of September, is maybe taken up by discussion of the
8 items for the SAF rule, so it may be put off another month
9 before we start discussion of the remediation program.

10 Any questions on that part of it?

11 And again, I will get an e-mail out letting
12 everyone know what is going to be on the agenda and
13 whether or not we will be getting into the remediation
14 issues.

15 Tier 2 software, I guess the question I had, and
16 I appreciate, Joe, his update on what they're doing. One
17 problem that we've having, I've sent in a number of
18 questions, e-mail and on the phone. I don't know if other
19 people are sending them in. I assume they are. But we
20 were told that a list i going to come out. It would be
21 really helpful to see that list, because a number of fixes
22 that I've found out about through DEQ, and other
23 consultants, you know, may already be available, and it
24 would be helpful if that could come out so it would be
25 nice to know when the list is going to come out of issues,

1 and any fixes, if possible.

2 The big problem I had is I found out through
3 trial and error that, it appears to me, and you can
4 correct me if I'm wrong, the program was developed on
5 Excel 2000, which creates a problem in that most people
6 don't have, or have more current versions, and I've worked
7 it on four different computers, three different versions,
8 and the only one that really works accurately is 2000.

9 And I, not being a computer genius, I don't know
10 if the fixes -- if it can be fixed if it's on different
11 versions. But that's the problem I'm having with saving
12 and everything else, it's the version that it's on. It
13 works fine on 2000, but 2002 and 2003, I'm having all
14 kinds of problems. And hopefully, I mean hopefully it can
15 be fixed, because I've been trying to find -- I don't even
16 -- well, I'm having a hard time finding a way to install
17 just Excel 2000 on my computer, if you can find it.

18 Another problem I'm having, and I called Jeanene
19 and asked her, if the -- with the new SAF rules that we're
20 looking at, and the new SRLs for a number of these
21 chemicals, my understanding, these are directly from EPA,
22 and I asked Jeanene if the toxicological data for the new
23 SRLs was in the model, and she said it was, and I'm having
24 some terrific problems with risk assessment stuff that I'm
25 doing, and I've heard from some consultants as well that

1 they're getting sites passed where they've got, for
2 instance, naphthalene well above the new SRL at two feet.
3 And I don't understand how that can be, not be a risk to
4 construction. And so I'm real concerned about how the
5 model works, what is in the model, and if indeed the new
6 data from EPA is indeed in there, because my understanding
7 is they're looking at naphthalene as a potential
8 carcinogen, and I don't know how it can pass at two feet
9 when it's three times the new SRL for construction. It's
10 not an inhalation issue, so I would like some answers on
11 it. Is it true, has the toxicological data truly been
12 worked into the model.

13 And, I mean, the client is afraid to leave this
14 in place even though the model is saying that there is no
15 risk because it's at two feet, and if they're going to
16 sell this property, they're concerned with a risk to
17 whoever buys the property and does any work, and I'm
18 concerned about stamping the risk assessment. And I have
19 heard from other consultants that are having similar types
20 of issues that it's passing. We're really concerned about
21 what -- how the model works and whether or not it's
22 appropriate for us to stamp the risk assessments.

23 MR. MC NEELY: Can I make a comment, Hal?

24 CHAIRMAN GILL: Sure.

25 MR. MC NEELY: There are really no new SRLs, we

1 know that. We put a drafting out. A lot of those were
2 ten minus six standard. Ten minus five is the standard
3 right now for suspected, so, I don't if the standard -- it
4 hasn't officially changed. The toxicity number might have
5 changed, but not the actual risk range, risk level, target
6 level, of ten minus six and minus five, so the model was
7 probably based on our current ten minus five range, which
8 it should be, because that's what we have in the rule
9 right now.

10 CHAIRMAN GILL: Well, and I understand that.
11 We've discussed that before is that as far as the Tier 1,
12 naphthalene, for instance, it's going to pass easily at
13 2700 for a residential SRL. I understand that, but my
14 understanding is that these numbers, that the new SRLs,
15 which I understand are not in place, are developed from
16 EPA numbers that they're basically using right now, but
17 we're doing risk assessments now that we are proposing
18 leaving in place, you know, three times the SRL, the
19 proposed SRL based on numbers that we are assuming are
20 already accepted by EPA. And the issue is is whether or
21 not it's passing a Tier 1 SRL, whether it's a risk or not,
22 and that's what we're concerned about. And I really need
23 to know, because we're jumping on the model now and I
24 assume other people -- I mean, I know two or three other
25 consultants that are indeed using the model.

1 We just want to, seeings how we are stamping this
2 and we're telling the client that there is no risk, we
3 want to make sure that there is indeed no risk for
4 whatever we're stamping and for the regulated public.

5 MR. MC NEELY: Hal, just remember, we went to ten
6 minus six on our proposal. The current standard is ten
7 minus five, so what you are saying, three times more, we
8 are talking about ten times, ten minus six, ten minus
9 five, ten times more.

10 So, if you are three times more than ten minus
11 six, you are still seven times less than the current
12 standard of ten minus five. So, the Tier 2 software is
13 probably based on the current risk level, so I'd just like
14 to make that comment and we will look into it.

15 CHAIRMAN GILL: Okay. Any questions on that
16 issue?

17 And the DEQ Completed Risk Assessments, I guess
18 this was discussed and I guess what we wanted to know is
19 DEQ -- I think the question that came up at the meeting
20 was whether DEQ is contacting the owner/operators, or what
21 is the process for doing the DEQ completed risk
22 assessments? I mean, how are the owner operators
23 contacted, and I guess I just didn't understand -- I
24 remember in discussing with DEQ in the past several months
25 that DEQ was doing risk assessments, but I don't think

1 until one of the audience members raised a concern that we
2 hadn't really thought of it any deeper as to what was
3 actually happening.

4 So, I guess the question that has come up from
5 the consulting community is what sites is DEQ doing risk
6 assessments on and how are they coordinating with the
7 owner/operators on the sites that they are doing, because
8 the issue that came up was that it was a communication
9 problem, that they already hired someone to do the risk
10 assessment, then got a letter saying it was closed because
11 DEQ done a risk assessment. So we need to figure out what
12 kind of communication we are going to use, so that was the
13 question, and we're just wondering what has been planned
14 to answer that.

15 MR. MC NEELY: You want a response?

16 CHAIRMAN GILL: Yes.

17 MR. MC NEELY: You know, we started this closure
18 project last year. We hired a contractor and we started
19 with -- we call them priority four sites, sites that are
20 ready for closure, but they're just waiting for something,
21 like a certification statement, a manifest of where the
22 soil went and things like that.

23 The next tier was sites that were -- been in the
24 file for a long time, there's been no correspondence. So
25 we've gone through all of those. A lot of those we

1 closed, quite a bit of them, because we took an fresh look
2 at it, we contacted, we sent letters to all the
3 owners/operators that were questioning and asking for
4 information, so we just pushed real hard, so those are low
5 priority sites, no case managers, so a lot of those got
6 closed.

7 A lot of them that were closed, like a couple
8 samples were above the standard, but most of them were
9 below. They looked just on the surface, looked like they
10 passed very quickly a closure, a Tier 2 closure. We put
11 those off to the side until we got our Tier 2 software
12 done. Now we are running those.

13 In general, we don't necessarily tell the
14 owner/operator, because most these sites have been in ADEQ
15 for ten years, five years, so we will do it, we close it,
16 we'll send them a letter saying your site is closed.

17 These are soil sites, not groundwater sites, and
18 most of them are pretty slam-dunk closeable, deep, one or
19 two concentrations. And if they hired someone, we might
20 have sent them an initial letter saying, hey, your site's
21 been, you know -- no activity for five years, please, you
22 know -- we are trying to send letters out saying the
23 fund's sunsetting in 2010, you need to take some action
24 now, or we try to take that action for them if it looks
25 like there is no risk or very low risk.

1 MR. CAMPBELL: If I may, I think what Mr. Gill is
2 trying to ask, though, and I think he asked in the last
3 Commission meeting as I recall, was that is there a way
4 for DEQ to send a letter to the owner/operator if DEQ's
5 going to pick up the file and do a risk assessment?
6 Because what's happening is in some cases, when you send
7 out the initial letter telling them that there will be a
8 sunset, they are hiring somebody. And about the time they
9 hire somebody and they get started, you guys finish it and
10 close it and now they've got a bill, or you are going to
11 get a bill, and they don't want that to happen. I think
12 that's what he's trying to ask you.

13 Is there any way to send a letter just to let the
14 owner/operator know that you are going run -- you are
15 going to try to run it through in Tier 2 and close it or
16 just run it through? You don't even need to tell them --

17 MR. MC NEELY: I would say no, really, because
18 we've already sent letters out and we get no response. If
19 someone is working actively, it would work, but these are
20 sites that have been around a long time. We run a whole
21 bunch of them. If they fail, we are waiting for the
22 owner/operator to do the remediation or cleanup. Some of
23 them pass; some of them fail. The ones that pass -- I
24 mean, if you send it out, you put a lot more letters going
25 back and forth, and I'd say we're not planning on doing

1 that.

2 CHAIRMAN GILL: What response were you asking for
3 in the letter?

4 MR. MC NEELY: Well, the response would be, you
5 know -- the ones that we close, that we think are
6 closeable, we try to close. The ones that needed one more
7 boring, a certification sent out, please sign a
8 certification, or we would actually just do a deficiency
9 letter saying you need to do some work, and then remind
10 them that the fund is going away, because a lot of these
11 people may not know. A lot of times they will submit
12 something and they've had no response for four years in
13 the agency, five years, they think everything is fine. I
14 don't even know if they know they even have a release in
15 some cases.

16 So we are sending those letters out saying you do
17 have a release and you do have an opportunity to get this
18 site closed with SAF funding.

19 CHAIRMAN GILL: It sounds like -- I agree with
20 Cynthia -- that when the first letter went out, it least
21 spurred them to do something, and I know, and I obviously
22 can't -- have no idea why they are all doing nothing, but
23 I'm sure that -- I know many of them that I have dealt
24 with in the past were waiting for the opportunity to be
25 able to do a risk assessment or waiting for the new model,

1 or whatever, which has been in the works for several
2 years.

3 But, I mean, I don't think this is probably going
4 to -- you know, I guess it could be an individual case,
5 but it could very well happen again, is that based on the
6 letter that they got, they started the process, and so
7 we've got two risk assessments running at the same time.

8 MR. MC NEELY: Ours is a quick screening, you
9 know, punch in the data we have. We don't go out and
10 collect samples, so, if the data is there, we can close
11 it.

12 CHAIRMAN GILL: Well, I think it's going to be
13 kind of a problem, especially if they've gone as far as to
14 take samples of the stuff, two additional samples, because
15 many of these have very little data.

16 Ms. Gaylord.

17 MS. GAYLORD: For those sites, if you are not
18 willing to contact the individuals that you're -- that own
19 those sites that you are working on, is it possible for
20 them to get information, because I've called on a couple
21 of these sites because there are no project managers, I've
22 been unsure who to talk to about the site.

23 If the owner of the site wants to begin work and
24 if they're prudent, they would in many cases want to
25 contact the department and say hey, I've hired someone and

1 I'm going to do something. Where there is no project
2 manager, are they sent to a specific contact or what
3 happens?

4 MR. MC NEELY: Joe can answer. We are always
5 going to have facility meetings, so I would recommend
6 that, call us, and Joe -- I think we do have a help desk,
7 but you're not going to get that specific information.

8 So, you want to answer that, Joe?

9 MR. DROSENDAHL: Basically, you can definitely
10 have any of your clients give me a call or give Bill
11 Engstrom or Kailash Bhatt, the other unit managers a call
12 if there is any site specific issues, and if you don't
13 have a case manager, and if there is any kind of questions
14 at the facility meeting that is, you know, needed and
15 everything, we will assign a person to deal with whatever
16 the issue is.

17 MS. GAYLORD: Just to be clear, that's not what I
18 meant at all. What I meant was, if the person calls you
19 and says, hey, I've hired someone, I'm going to do some
20 work, will they be in touch with a person at DEQ who knows
21 that you're doing a risk assessment who might say to them,
22 hold off for a few weeks, we're actually doing something
23 on the site and going to make a determination.

24 Because I understand the burden. You are saying
25 it would be a burden for DEQ to send out a bunch of

1 letters, notification letters on a bunch of sites where
2 nobody has done any work for ten years, and that it is in
3 the regulated community's best interest to actively look
4 at the site, and if it's closeable, to close it. I don't
5 have any objection to that. I think it's wonderful that
6 you are working your way through those old sites. I'm
7 just saying is there a logical way for the owner to avoid
8 a bunch of unnecessary work?

9 MR. MC NEELY: Al Johnson is in charge of the
10 closure project. He's the one that sent all the letters
11 out.

12 Are you the contact on all of those letters, Al?

13 MR. JOHNSON: Yes, myself and Earl Buck.

14 MR. MC NEELY: Every letter that went out, they
15 have a contact. It's Al Johnson. And he can tell you --
16 he's in charge of it and he has a list of what he's
17 looking at, and he's the one that divvied them up, which
18 ones are closeable, which ones need more work, so they can
19 call Al and he can tell you where it is.

20 MS. GAYLORD: Perfect.

21 MR. MC NEELY: In general, if we sent you a
22 letter, I think in general, it probably needs some work, I
23 think.

24 MS. GAYLORD: Just to be clear, I'm not worried
25 about any sites I have. I'm worried about the scenario

1 that was posed in our last meeting, other people's sites,
2 you know, people who might not have known of the UST.
3 Certainly, I have a client who inherited a ranch from his
4 father and got a letter, and I'm not worried about him,
5 he's fine. But there might be somebody else in a similar
6 situation, and all we're trying to address is whether
7 there is a need to address this issue because of the
8 concern expressed in the last meeting.

9 It sounds like if anyone takes the time to call
10 DEQ and say, I've hired someone, they will be directed to
11 Al, and Al can say, actually, yours is one site we're
12 looking at, you might want to hold off for a few weeks.

13 MR. JOHNSON: I will be able to give them a
14 status, update on it.

15 MR. MC NEELY: Can I ask you a question, Karen?
16 When your client received the ranch, inherited it, did he
17 know he had a LUST number and a release?

18 MS. GAYLORD: No.

19 MR. MC NEELY: That's why we are sending the
20 letters out. People don't know. I think they would know,
21 and if they knew, I think they would probably try to tap
22 into SAF or go to a state, or something. We are really
23 trying to push to get these sites closed in four years and
24 ten months and counting.

25 CHAIRMAN GILL: I hope it will be an isolated

1 case, because I think probably in most cases, if they've
2 been sitting on them for ten years, they're probably not
3 going to do anything.

4 Well, I guess the problem is how does the
5 owner/operator handle reimbursement for work that he's
6 done for a site that's closed, because he's, albeit late,
7 he's moved forward in good faith to close this site, and I
8 think that is what the actual issue is going to be.

9 MR. MC NEELY: I think, you know, we have a
10 letter written to him asking him if he did submit a claim.
11 As long as he does it in 180 days and he doesn't do any
12 more work after we tell him it's closed, I think there
13 probably will be no problem.

14 CHAIRMAN GILL: Okay. Any more questions,
15 comments on Technical Subcommittee issues?

16 Let's move forward on to Item No. 7, UST Policy
17 Commission Records Retention Policy.

18 I handed out to you the first page of -- the
19 first couple of pages of a packet that Gail got from
20 Tamara that she received from Laurie Woodall, the
21 Commission's attorney, and there is several other things
22 that was in the packet, but I think for our purposes just
23 the first couple of pages is what's important at this
24 point.

25 And I might -- I will read to you, and you can

1 follow along just for the record a couple of, three, or
2 four of the sentences that I highlighted in here.

3 In the first paragraph is -- Laurie Woodall is
4 suggesting that DEQ administrative support staff provide
5 the Commission Members with a copy of Chapter 6 of the
6 Agency Handbook, which provides a detailed discussion of
7 the obligations and procedures relating to the maintenance
8 of public records. She also suggests review of the ADEQ
9 policy and procedures manual, which has some retention
10 schedules.

11 The second line basically refers to A.R.S.
12 41-1347. (A): All records made or received by public
13 officers or employees in the course of their public duties
14 are the property of the State.

15 Third one, each public officer is responsible for
16 preserving, maintaining and caring for public records
17 within their offices.

18 Fourth, public records shall not be destroyed or
19 otherwise disposed of by any agency of the state, unless
20 it is determined by the State Library that the record has
21 no further administrative, legal, fiscal, research or
22 historical value. I'm sure all our files are historic.

23 The second paragraph -- or third paragraph on the
24 bottom, as ADEQ provides administrative support for the
25 Commission, I would recommend -- this is Laurie Woodall --

1 that the Commission receive a briefing from ADEQ
2 concerning its records retention schedules for the
3 Underground Storage Tank section. The Commission could
4 then determine if these standards would be suitable for
5 its records.

6 The last paragraph, she also recommends that ADEQ
7 administrative support staff, Al Johnson, contact the
8 Records Management Division of the Department of Library
9 and Archives to set up a meeting to discuss the
10 administrative processes for establishment of a retention
11 schedule.

12 After reading through this, and I didn't burden
13 you with all -- the last half was basically a
14 presentation, a slight presentation that I guess the
15 Records Management Section gives people, but my question
16 is, I guess we should have a presentation on what the
17 state does. But my question is, how are our types of
18 documents and e-mail, in particular, because that was on
19 the last page, first paragraph on the second page, is how
20 do we handle our e-mails and what documents are we truly
21 talking about.

22 Karen?

23 MS. GAYLORD: Well, I think in the other portions
24 of her letter she does say that she's not familiar with
25 other agencies' records retention policies, and that we

1 might look at those policies.

2 Having drafted some for cities and having looked
3 at the state's, I propose that we stick with the approach
4 outlined by Gail in our past meeting where Commission
5 Members are allowed to delete e-mails after review and
6 allowed to delete voice mail messages after review, with
7 Gail taking the responsibility to assure that one copy is
8 maintained at all times as our public record and that DEQ
9 has a copy as well.

10 And my understanding is, as long as our records
11 retention policy is absolutely clear, that that is the
12 policy. My understanding is that's in complete compliance
13 with the open record law, and I think that's what I heard
14 Laurie say.

15 So, while I think that a commission that has more
16 complex records might be well-advised to take the time to
17 listen to a full presentation, I think that in our case,
18 we get copies of things and I think -- the one thing I
19 left out was that Gail wanted to ensure that the
20 subcommittees would also have an official copy of the
21 record. But that seems to me to be a sensible approach.

22 MS. PASHKOWSKI: Mr. Gill, I only have one
23 question.

24 Karen, is there a likelihood that Gail would not
25 be the recipient's backup of certain e-mails, so if you

1 sent something to Al and didn't copy Gail, you'd have to
2 address that issue, too, because there is a likelihood
3 that Gail wouldn't have everything.

4 MS. GAYLORD: Hal, Chairman Gill, to that point,
5 Gail did deal with that point by saying that she should be
6 copied on every official Commission interaction, and she
7 also cautioned us on the appropriate use of e-mail and the
8 fact that, for the most part, we're judicious in our use
9 of e-mail. We don't engage in lengthy discussions by
10 e-mail because it's a violation of the law, but she did
11 caution us that if we have any e-mail between members or
12 between a member and DEQ that would constitute public
13 record, that Gail always be copied.

14 CHAIRMAN GILL: I guess my question, and again
15 goes back to what I said, is what records are we truly
16 talking about? Every single thing, in other words, every
17 draft agenda?

18 MS. GAYLORD: Chairman Gill, I think that's what
19 I heard. I know that having drafted policies for cities,
20 we tend to act out of an abundance of caution and treat
21 most e-mail exchanges as public record.

22 CHAIRMAN GILL: I guess what I will ask is for --
23 and I don't know that Gail -- I don't think she presented
24 anything in writing to us. I will ask her at the next
25 meeting, or when she has time, to bring that up again,

1 present -- provide a written document of what she said our
2 retention policy should be, and then we can discuss it
3 more in detail then and we can see exactly what she was
4 thinking. Because we really have to rethink how we do
5 everything, because we have -- well, I guess because I'm
6 on the subcommittee as well, I've got a number of e-mails
7 that are going off to Al trying to set the agenda, and
8 then back and forth on the agenda for the Policy
9 Commissions between all of us, and we have to rethink how
10 we do that and where those go and who to copy, and that
11 kind of stuff.

12 Now, we are real careful when we are discussing
13 issues that we make sure that we're not discussing with a
14 quorum, or anything like that, but I think we need to
15 think about that again.

16 Barbara.

17 MS. PASHKOWSKI: Two additional thoughts. There
18 was recently issued an Attorney General opinion on open
19 meeting laws with respect to e-mails, and I don't know if
20 the Commission has received -- you have received that.
21 Okay.

22 And the second issue is perhaps Gail might want
23 to speak with Laurie Woodall with respect to draft
24 documents, because typically draft documents are destroyed
25 when the final document comes out. So, I don't know that

1 you want to clutter your records with drafts, but she
2 might want to speak to Ms. Woodall about that.

3 CHAIRMAN GILL: And just for the record, all of
4 mine were just now lost when hard drive was corrupted.
5 They're all gone.

6 MR. MC NEELY: I have one comment, Hal, about
7 subcommittees. I know in the Policy Commission you have
8 you to have minutes. Subcommittees, I think, are
9 optional. I don't think we have minutes. I recommend not
10 doing it, because I think it's -- they're more like
11 working groups. We don't have the resources.

12 CHAIRMAN GILL: There is no way to tape minutes
13 because it's coming from everywhere.

14 Okay. I will ask Gail to -- well, we will bring
15 this up again on the next agenda, and I will talk with her
16 in the meantime and see if she can provide a written
17 document for us to look at and discuss and have questions.

18 Theresa?

19 MS. FOSTER: One thing I'd recommend, I know for
20 draft documents and maybe working documents by e-mail, as
21 a city employee, I am required to maintain that e-mail for
22 30 days. I cannot destroy. After 30 days, automatically
23 destroy. Maybe that would be an option for any of those
24 draft documents or documents that aren't as necessary,
25 that they just be maintained for 30 days for public review

1 if somebody really wanted to find them, and after 30 days
2 they get discarded.

3 CHAIRMAN GILL: We will probably end up bringing
4 all these suggestions up again, but primarily for now, as
5 I said, I will have Gail see if she can put together a
6 document of what she had discussed at the last meeting and
7 we can have that in front of us, and I will ask her, if
8 she has time, to send it out early so everyone has a
9 chance to look at it, think about it, and then have
10 comments and recommendations, suggestions when we have our
11 next meeting.

12 Any more questions on retention policy?

13 Okay. Summary of Meeting Action Items.

14 Actually, the only action item I can remember is
15 the one that we just said, and that, again, is just to
16 have Gail provide us with a written document of her ideas
17 on the retention policy for documents and for e-mails and
18 then get that out to us as early as possible so we can
19 look at it and think about it.

20 Anyone can think of any other action items that
21 we had?

22 Okay. And the agenda for next Commission
23 meeting, that being one of them, we will have our usual
24 cast of characters giving presentations.

25 We need to vote next meeting on final approval

1 and recommendations for the director on the SAF rule, and
2 that's why these two, the -- if needed, the Financial and
3 the Technical Subcommittee meetings will be used for final
4 discussions on the issues that were still remaining on the
5 SAF rules, because we have to vote on it by the -- on the
6 next meeting for a recommendation.

7 So, at this point, that's the two that I can
8 think of that will indeed be on the agenda is the
9 discussion of the retention policy, unless Gail needs time
10 to meet with Laurie Woodall, or something like that, and
11 then a vote on the SAF rule. And then we will have our
12 usual topics.

13 Can anyone think of -- anyone have any
14 suggestions for next meeting?

15 General call to the public? Didn't receive any
16 speaker slips.

17 Okay. No announcements.

18 Next meeting will be September 28, 2005, and I
19 thank you all for coming.

20 (9:52 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 36 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 24th day of August, 2005.

Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477