

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
September 28, 2005  
9:00 a.m.

Location: 1110 W. Washington  
4th Floor  
Phoenix, Arizona

REPORTED BY:  
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(Original)

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1 COMMITTEE MEMBERS PRESENT:

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3 Gail Clement, Chairman

4 Hal Gill (Telephonic appearance.)

5 Andrea Martincic

6 Jon Findley

7 Philip McNeely

8 Karen Gaylord

9 Theresa Foster

10 Barbara Pashkowski, Esq.

11 Myron Smith

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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, everyone,  
4 welcome to the September 28th, 2005 Underground Ground  
5 Storage Tank Policy Commission meeting. We will do a roll  
6 call.

7 Gale Clement.

8 MS. MARTINCIC: Andrea Martincic.

9 MR. FINDLEY: Jon Findley.

10 MS. PASHKOWSKI: Barbara Pashkowski.

11 MR. SMITH: Myron Smith.

12 MR. MC NEELY: Phil McNeely.

13 MS. GAYLORD: Karen Gaylord.

14 MS. FOSTER: Theresa Foster.

15 CHAIRPERSON CLEMENT: And Hal Gill is  
16 participating by telephone.

17 Before we get into the actual agenda, we are  
18 going to be short on time with some of the key folks that  
19 are here today, and I want to make sure that everybody has  
20 an opportunity to discuss and to hopefully vote on what is  
21 the key agenda item for this meeting, which is the  
22 comments on the draft State Assurance Fund Rule. So what  
23 I'm going to suggest is that we skip to Agenda Item No. 5,  
24 6 -- Agenda Items No. 5, 6 and 7, and then we will go back  
25 to the regular agenda items after we've completed those.

1           We've had a series of meetings through the  
2 Financial and Technical Subcommittees on the draft State  
3 Assurance Fund Rule, which was published on August 21st,  
4 2005, as a formal notice through the Secretary of State's  
5 office. And the committees put together a joint  
6 three-page -- everybody should have three pages. The copy  
7 that I gave you was missing 2, so everybody should have  
8 the three pages now. And these are comments and  
9 recommendations that they have compiled relative to those  
10 meetings and stakeholder input.

11           This is a complicated rule, and we're going to  
12 need to discuss this in some length to make sure people  
13 understand these issues and they can support certain  
14 recommendations to the Director or not.

15           In addition to this three-page summary, there is  
16 a copy of sections of the Notices of Proposed Rulemaking,  
17 and those citations that are in the three-page summary are  
18 highlighted in this subsection of the Notices of Proposed  
19 Rulemaking, so you can actually find the language as we're  
20 discussing it.

21           And I'm going to ask Andrea to take the lead on  
22 this, though Hal Gill has been very, very involved.  
23 Unfortunately, because he's participating by phone, we  
24 will just ask Hal to contribute as we go along.

25           MS. MARTINCIC: So basically what Gail's saying

1 is the Rule was published with the Secretary of State's  
2 office on August 12th that evening. We knew from prior  
3 Policy Commission meetings that the Financial Subcommittee  
4 was tasked with looking at the proposed rule and  
5 identifying any issues that stakeholders had. So we  
6 immediately scheduled a meeting for August 18th.

7           At that meeting, many folks were still digesting  
8 the Rule. What we did at that meeting was pulled out our  
9 previous comments from back in October 2004 when this  
10 whole process started to have kind of a reference point of  
11 what the issues that were identified then and to see if --  
12 you know, to go through the rules, see what had maybe been  
13 addressed, what we still had issues with.

14           So the August 18th meeting, that's what pretty  
15 much transpired and everyone agreed we needed a little  
16 more time to come back and talk about it again, which we  
17 did on September 8th. We had good, you know, stakeholder  
18 participation in both of those meetings, and it was also  
19 decided that after the second meeting we ought to have  
20 another final meeting with the Technical Subcommittee, and  
21 we met jointly on September 14th to finalize all of the  
22 issues that were identified by stakeholders.

23           The three-page summary of issues were all  
24 identified and agreed upon by the stakeholders that these  
25 were all high priority issues. So, that's why this is

1 kind of lengthy. But they were identified by everyone.  
2 We took votes at each meeting, and everyone agreed that  
3 these should remain on a list of issues to go forward to  
4 the Policy Commission.

5           So, I guess we will just kind of go through this  
6 here. The main overriding issue that all of the  
7 stakeholders had at these three meetings is that the  
8 feeling that this proposed SAF Rule is contrary to the SAF  
9 program as stated in the proposed Rule itself. And so  
10 what we've done here, the italics is actually the SAF  
11 program purpose as stated in the proposed rule. And it is  
12 the feeling of the stakeholders that the rule actually is  
13 just creating new ways not to pay eligible owner/operators  
14 for reasonable and necessary costs associated with  
15 remediation, which we feel is contrary to the purpose of  
16 SAF. So that's really one of the main overriding problems  
17 that all stakeholders had with this Rule.

18           Next, the other really big issue had to do with  
19 retroactivity. A lot of these provisions we feel are  
20 going to apply to owner/operators who have open LUST sites  
21 and we just feel that's fundamentally unfair.

22           And then, now this is where we get into more of  
23 the details or the economic impacts. In the Rule, and I  
24 believe it's on page 3030, is where they kind of start  
25 talking about the impacted parties. In the proposed Rule,

1 the agency basically states that they don't feel the  
2 proposed Rule is going to have an economic impact on any  
3 of the parties affected by the SAF program. And the  
4 stakeholders felt strongly that that's not the case and so  
5 we, you know, spent the bulk of these three meetings  
6 identifying these economic impacts.

7           And they're kind of grouped. If you kind of look  
8 through the document, the bold text items are sort of the  
9 headings for the various economic impacts that were  
10 identified by stakeholders.

11           So, do we want to, I guess, go through each  
12 section or --

13           CHAIRPERSON CLEMENT: Does anybody have any  
14 questions or comments?

15           MS. MARTINCIC: Before we get going into the  
16 specific details of the economic impacts?

17           And, Hal, feel free to chime in if you want.

18           MR. GILL: I will.

19           MS. MARTINCIC: So the first area has to do with  
20 eligibility. There were two citations that you can see here  
21 in the notes that deal with this. Basically we feel that  
22 the Rule is changing some of the eligibility requirements  
23 and what makes someone eligible for the program.

24           The first section is kind of confusing because  
25 that first citation, if you are determined ineligible, it

1 doesn't appear that the proposed Rule allows you to  
2 establish eligibility at any point, so, you know, which  
3 the current rule does. So that was a change.

4 All of these issues, economic impacts were  
5 identified as changes to the current Rule.

6 Does anyone have questions about the eligibility  
7 sections, want to discuss it, or -- I guess I will just  
8 keep moving through, and then if people have questions,  
9 you know, feel free to interrupt me, or I just figured it  
10 would be easier to talk about it as we are going through  
11 instead of at the end.

12 The next area of economic impact has to do with  
13 scope and standards of review. The first citation,  
14 18-12-608(C), okay, this is where the agency within the  
15 Rule has listed out -- let's see on the page if you want  
16 to follow along -- listed out a long laundry list from A  
17 through J, conditions that have to be met for  
18 reimbursement. Is this not going to jibe?

19 CHAIRPERSON CLEMENT: There is 3061. If you look  
20 at C1, A through D, then on the next page --

21 MS. MARTINCIC: Is the C to J.

22 CHAIRPERSON CLEMENT: That's where the arrow goes  
23 down because it continues on to the next page.

24 MS. MARTINCIC: You can see at the bottom of  
25 3061, Standards of Review, this is what we are citing, A

1 through J. These are all conditions that have to be met  
2 to be reimbursed and, you know, problems existed with  
3 statements A and B. The concern there is that most  
4 cost-effective, but there is nothing to prevent the agency  
5 from later determining that a remediation method is no  
6 longer cost-effective, which is a problem.

7 Statement D --

8 Are you following along with us, Hal?

9 MR. GILL: Yes. I got the Rule.

10 CHAIRPERSON CLEMENT: Hal, it was e-mailed to you  
11 this morning.

12 MR. GILL: Oh, let me check.

13 MS. MARTINCIC: I think what statement D is  
14 talking about is that it's unclear about which schedule  
15 the rule references, and it's relying on a document that's  
16 not part of the rule that could be changed. The cost  
17 schedule obviously is going to be changing. We will come  
18 back to that one.

19 Statement H has to do with if something is left  
20 off the first application, it doesn't appear that you can  
21 add it at any other point, which is problematic. In other  
22 words, you have to provide a rationale in your first  
23 application for any subsequent charges, and it's like you  
24 are sort of being told you have to forecast out what  
25 additional charges might be in your first application or

1 else you're not eligible for the costs.

2           CHAIRPERSON CLEMENT: I think the other problem,  
3 this was actually a very key issue for many of the  
4 stakeholders, and I think the other problem with this is  
5 there are mistakes made. There are mistakes made by  
6 eligible parties submitting applications. There are  
7 mistakes made by the department in reviewing applications.

8           And the language in this section really appears  
9 to limit the opportunity anyone has to correct those  
10 mistakes. The department mentioned that they have  
11 basically an informal process which allows one to withdraw  
12 costs or applications, however, that's not identified in  
13 this Rule or any other rule, and there is a concern that,  
14 although this is an informal process that they appear to  
15 support. If they get a large number of these and it  
16 becomes administratively burdensome, there certainly is a  
17 potential that in the future they would limit that  
18 approach and folks would be really in a difficult bind in  
19 terms of making, I think, what could be reasonable  
20 corrections.

21           MS. MARTINCIC: And from the meetings, it also  
22 sounded like most stakeholders weren't even aware of this  
23 withdrawal opportunity, and it was brought about from the  
24 agency in the second stakeholder meeting, so I think what  
25 Gail says is very important to realize it may be a remedy,

1 but it's not in the rules, so it's really not protected  
2 for owner/operators as an option.

3 MR. GILL: Gail.

4 CHAIRPERSON CLEMENT: Yes.

5 MR. GILL: On that statement H there, the  
6 608(C)(1)(h), the other issue there is that, you know, all  
7 owner/operators and consultants. I'm sure DEQ is aware,  
8 also, that if things come up in the field that you are  
9 never prepared for finding a beared line or just any  
10 number of incidents come up when you are actually out in  
11 the field that you are not prepared for or did not plan  
12 for because they're just not effective, and according to  
13 this language here, if the costs per put in to deal with  
14 that, then you cannot get reimbursement for it.

15 MS. MARTINCIC: Thanks, Hal.

16 MR. FOSTER: I have another issue dealing with  
17 this. If I have a major task going on and it's going to  
18 cover, say, six months to a year, that would mean I'd have  
19 to pull the application out until the very end and submit  
20 it, where that's cumbersome on the owner/operator because  
21 some tasks go on for many months at a time.

22 MS. MARTINCIC: Thanks, Theresa.

23 Next issue is the definition for substituted work  
24 item. And again, the definition, stakeholders feel that  
25 it precludes ADEQ from paying for approved activities that

1 exceed the costs proposed in the work plan and from  
2 changing that item. It's sort of related to what we are  
3 looking at at statement H.

4           Is there any other comments or discussion about  
5 the scope and standards of review?

6           The next main issue that is also identified as a  
7 large economic impact has to do with denial of  
8 resubmittals. This is a very large issue for  
9 owner/operators, all owner/operators and eligible parties.  
10 Currently under the current rule, you can resubmit costs  
11 that are denied. This rule does not allow that. And it's  
12 actually a basis for outright denial if any resubmitted  
13 costs are part of an application.

14           CHAIRPERSON CLEMENT: It doesn't eliminate the  
15 formal and informal appeal process, but it would require  
16 the owner and operator to appeal each and every situation  
17 instead of gathering other issues and --

18           MS. MARTINCIC: Which is problematic, especially  
19 for small owner/operators, and I think in the long run  
20 it's pushing more people to the appeal process, which is  
21 something that the Policy Commission has felt very  
22 strongly that that ends up costing all parties much more  
23 money in delays, cleanup and ultimate closure, which is  
24 again the purpose of the SAF. And it does seem to really  
25 penalize, you know, the smaller owner/operators, and I

1 think you set up a system in which they just choose not to  
2 appeal even if they do have a good case.

3 MS. FOSTER: I think there is another issue here  
4 is that during my tenure of experience with the Fund,  
5 there have been a number of cases in which we have gone to  
6 formal appeals and were denied certain dollar figures  
7 because of additional information that was needed that  
8 will take you a long period of time to acquire.

9 In those cases, we worked with DEQ saying, let's  
10 hold this off, put it on the next application and go ahead  
11 and finalize the application we're dealing with, so it's  
12 putting the burden back to the owner/operator not on the  
13 DEQ to make sure people don't resubmit items twice, and  
14 that just seems a little bit unfair.

15 MR. GILL: If you look at the very last sentence  
16 in that --

17 MS. MARTINCIC: Hal, last sentence, you mean in  
18 that first citation?

19 MR. GILL: The denial of resubmittals, the very  
20 last sentence in that paragraph.

21 MS. MARTINCIC: That it discourages financially  
22 needy eligible parties from contesting denied costs?

23 MR. GILL: It says, "In addition, if an incorrect  
24 application is denied and the reason for its denial is  
25 corrected, it appears that the eligible party would not be

1 able to resubmit the application because resubmittal is  
2 listed as a reason for denial."

3 MR. MC NEELY: Not true. A new application can  
4 be resubmitted.

5 MS. MARTINCIC: So the stakeholder still feels  
6 this is a problem. The agency does not feel it's an  
7 issue, and we're at an impasse, so to speak.

8 Is there anything else anyone wants to add on the  
9 resubmittal issue?

10 All right. The next main area was direct  
11 assignment of benefits, and the issue here is that it  
12 seems to change the current rule and now denies volunteers  
13 the ability to directly assign benefits. So basically the  
14 service providers are going to have to wait to get  
15 reimbursed by the volunteers and be forced to carry more  
16 expenses, so that's a direct change from the current rule.

17 The next issue had to do with inappropriate seal  
18 requirements, and I understand this issue, but I wonder if  
19 it might be more appropriate for someone to come forward  
20 and explain the seals and why that is a issue.

21 CHAIRPERSON CLEMENT: This requirement has a list  
22 of those documents that will be required to be sealed by  
23 the appropriate technical registrant, and on this list are  
24 actual forms, and I think most registrants have no problem  
25 in sealing documents that are related to actual work

1 product, which are tied to technical data; however, to  
2 seal a general form, particularly at a point in time when  
3 you don't have the information necessary to be certain  
4 that what you're stating is accurate and complete is  
5 problematic.

6           And where I think the stakeholders are most  
7 concerned about this is if a registrant is uncomfortable  
8 placing a seal on a form, which I personally would be,  
9 then the agency may have the opportunity to deny the cost  
10 to prepare the form. And so, again, there may be some  
11 financial repercussions to the applicant.

12           MR. MC NEELY: Can I make one comment on that?

13           MS. MARTINCIC: Sure.

14           MR. MC NEELY: It's only one form that's in  
15 dispute, the LUST Application form. The reason it's on  
16 there is you have to estimate travel time and  
17 contaminants, if he suffers an impact within two years, if  
18 his company is impacted in the two years, that's  
19 hydrology. They can make an interpretation of your site  
20 data. If you have no specific site data, you have to look  
21 at historical or flow direction. That's more than this  
22 project manager, you know, making an assumption. It's  
23 somebody thinking about hydrology, travel time, flow  
24 direction, flow velocity, and that's why this form is on  
25 there. But we will look at your comment, but there is a

1 rationalization of the reason why we put it on there.

2 MS. FOSTER: But can't those items be included in  
3 the characterization report and pulled off the form? I  
4 have a problem with someone signing a document on behalf  
5 of a city on which I can't get them authorization to act  
6 for the city.

7 MR. GILL: That is actually a recommendation that  
8 came out of the meetings, that it would make sense to have  
9 the classification form in the report that it was -- that  
10 was the backup for the form, and I don't think any of the  
11 registrants have a problem with that, but it's just the  
12 form itself that we all have problems with.

13 MR. MC NEELY: And I think you have to have the  
14 form stamped -- not stamped but submitted prior to  
15 finishing the site authorization on the corrective action  
16 rule. We want the form relatively early on in the process  
17 so we know prior. Actually, when the site authorization  
18 is done -- you can include it in the application, because  
19 you need new forms to get information updated, but at the  
20 same time we would like the form early on in the process  
21 so we can actually know if there is an impact to the  
22 receptor.

23 MS. FOSTER: Can you describe to me if DEQ knows  
24 this information 60 days in advance before you get the  
25 site characterization report what impact that will have on

1 your day-to-day operations?

2 MR. MC NEELY: I can describe to you what happens  
3 if we get them two years in advance and somebody is  
4 drinking contaminated water we didn't know about.

5 MS. FOSTER: Is that the norm?

6 MR. MC NEELY: I don't know the norm, but that's  
7 the issue and that's why it's in the corrective action  
8 rules and due process.

9 CHAIRPERSON CLEMENT: Karen.

10 MS. GAYLORD: Isn't it possible to have the seal  
11 apply only to the information that you need regarding the  
12 estimate?

13 MR. MC NEELY: Right.

14 MS. GAYLORD: And not to the rest of the form?  
15 Is there a way to have it as an attachment?

16 MR. MC NEELY: The form is a one page. Yes, it  
17 could be attached as second page to the form. The only  
18 part on there is travel time. The rest of it is site  
19 location, release. Is there an impact within two years.  
20 The two-year thing is the main issue for the stamp.

21 CHAIRPERSON CLEMENT: Ms. Gaylord?

22 MS. GAYLORD: I don't have a problem sealing the  
23 form as well, and I'm just wondering if there is some  
24 creative way to solve this by having a separate document  
25 attached that contains the estimate?

1           CHAIRPERSON CLEMENT:   Wouldn't you want to know  
2 what they base their interpretation on? I certainly would  
3 if I was an agency reviewing such a document. And so  
4 that's where work product comes into being. It's not when  
5 you check off a box and put a number next to it. And so,  
6 I can understand the agency wanting work product to be  
7 sealed that would support the form, but I don't understand  
8 where a form should be sealed by a registrant, I just  
9 really don't.

10           MR. MC NEELY:   Well, look at the comment. You  
11 are right.

12           MS. MARTINCIC:   And that's the purpose of this.  
13 The stakeholders have identified all of these as issues  
14 that need to be further addressed before the Rule moves  
15 forward, so obviously there is quite a bit of discussion  
16 on this one, and it does seem to be a problem for service  
17 providers.

18           MR. FINDLEY:   Could I ask? I'm not as familiar  
19 with this as you. What is the process of sealing the  
20 form? Physically, what does that mean?

21           CHAIRPERSON CLEMENT:   Basically as a registered  
22 professional in the State of Arizona, you have to go  
23 through a testing process, and then you become a  
24 registrar, and there is geologists or engineers and  
25 different types of engineers, so the major work product

1 documents that one would submit to an agency, such as the  
2 Department of Environmental Quality, have to be stamped by  
3 someone or sealed by someone who's a technical registrant  
4 in the appropriate field. And that's customary and  
5 satisfactory to most professionals. Where it becomes  
6 problematic is if you are having to seal something that  
7 isn't work product or has the substance necessary.

8 MS. MARTINCIC: Because you can face consequences  
9 as a registrant.

10 CHAIRPERSON CLEMENT: There are very, very  
11 serious consequences.

12 MR. FINDLEY: It's like you have no control over  
13 and knowledge of, and your seal appears on that document.  
14 Thank you.

15 CHAIRPERSON CLEMENT: Okay.

16 MS. MARTINCIC: The next issue that was  
17 identified had to do with confidentiality, and this  
18 citation basically allows -- a new one would allow ADEQ to  
19 request business contractual agreements between eligible  
20 parties and their service providers, and at the same time  
21 it doesn't appear that the agency has statutory authority  
22 through the state to protect that information, so if  
23 someone came in and did a public information request, that  
24 information could be made available and could prevent --  
25 could cause, you know, some businesses' confidential

1 information to get out and in fact obvious competitive  
2 issues among service providers and even among eligible  
3 parties, so that was identified as a concern.

4 MS. PASHKOWSKI: I do have one comment. I  
5 noticed in the statement here that you've neglected to  
6 include the confidentiality provision under the UST  
7 provisions. There is a confidentiality statute.

8 MS. MARTINCIC: Do you have that statute with  
9 you?

10 MS. PASHKOWSKI: It's in Title 49.

11 MS. FOSTER: The other issue would be, if I  
12 submitted a contract and it's placed in the file, what  
13 cautions are set that somebody couldn't go in and open it  
14 up?

15 MS. PASHKOWSKI: You need to read the statute,  
16 advise the agency that you want it to remain confidential.  
17 I believe the agency puts that in the confidential file.  
18 If there is a public records request, it's going to be  
19 incumbent upon you to protect your confidentiality.

20 MS. MARTINCIC: I think that's where the problems  
21 lie. If you are relying on the agency to tell you that  
22 someone's requesting public information on a site of  
23 yourself, and, you know --

24 MR. MC NEELY: What we would do is, we have a red  
25 file, separate from the other files, it say confidential.

1 If someone requests that information, our in-house  
2 attorneys would look to see if it's confidential or not,  
3 and we will go through, but we have a process, we're not  
4 going to give everything in the file. Someone will  
5 challenge us in court, let's say, you know, I could see  
6 it, probably.

7 CHAIRPERSON CLEMENT: I'm not an attorney, and I  
8 don't know the confidentiality statute, but we did have  
9 attorneys in this discussion, and it's my understanding  
10 from the comments we received that they did not feel that  
11 that statute of confidentiality was sufficient. That is  
12 not --

13 MS. MARTINCIC: It is identified as a stakeholder  
14 issue so it's being brought forth to the Policy  
15 Commission.

16 MR. MC NEELY: And I'd like to add, when we have  
17 this authority already, we have to show that 10 percent is  
18 being paid. We can ask to see if 10 percent is being  
19 paid. We are just clarifying in the Rule. Everything we  
20 do is based on this statute. Since we're clarifying the  
21 rule and issues come up, we can't keep it confidential.  
22 That's with all state agencies. We don't have a whole lot  
23 of protection in terms of confidential documents.

24 CHAIRPERSON CLEMENT: Ms. Gaylord.

25 MS. GAYLORD: I think I missed a step. I was

1 involved in discussion some time ago when the agency was  
2 pursuing a certification from the applicant, that they  
3 were paying the 10 percent. Did the agency move away from  
4 that approach towards wanting to go see the contract in  
5 order to assure itself that the 10 percent --

6 MR. MC NEELY: We still had the certification  
7 that we take.

8 MS. GAYLORD: So, is it your fear that the  
9 certifications are --

10 MR. MC NEELY: If there is a dispute in the  
11 certification, we have other information that disputes  
12 certification. That's when we like to ask for additional  
13 documentation. That's the only case that I know of that  
14 we even thought about asking. We don't do it every time  
15 because we don't want to have 2000 contracts.

16 MS. MARTINCIC: The concern, I think, among the  
17 stakeholders is with this being added to the Rule. It  
18 does allow ADEQ the authority to do that on a more  
19 frequent basis.

20 MS. PASHKOWSKI: It's already provided in the  
21 statute. We can do it either way.

22 MR. MC NEELY: Clarify the statute.

23 MS. MARTINCIC: All right. So this is still an  
24 issue identified by stakeholders. Clearly there is a  
25 disagreement between the stakeholders and agency on this

1 issue.

2           Is there any other discussion about it?

3           Move on. The next issue that was identified that  
4 has an economic impact has to do with the co-pay credit,  
5 and this citation, the problem is that the new language in  
6 the proposed Rule basically does not allow an  
7 owner/operator to carry forward the co-pay credit. It  
8 currently is allowed under the Rule, so, in other words,  
9 if your first application, if the value of that  
10 application is not high enough to cover your co-pay, you  
11 couldn't resubmit that because resubmittals are now a  
12 basis for denial, so, you've either got to make sure your  
13 application -- you've got to front a lot of money for a  
14 while to make sure your first application is extremely  
15 high or you risk losing your full co-pay amount, which is  
16 allowed to you under statute. So, that was identified as  
17 a concern among stakeholders.

18           Is there any discussion on that?

19           Okay. The next issue has to do with scoring and  
20 ranking, and there is some significant changes to this.  
21 Stakeholders are concerned. I think the agency feels like  
22 we're not in a ranking process right now so that it  
23 doesn't matter, but I think that we need to be a little  
24 more big-picture focused than that in the sense that with  
25 the program being phased out, there is a likelihood that

1 we would have to go into ranking, and I think making these  
2 substantial changes at this hour of the program is  
3 problematic, and we can go through these changes and why  
4 they will create significant economic impacts for eligible  
5 parties.

6           The first issue has to do with the pre-approval,  
7 and currently under -- this one is kind of combining two  
8 issues. But under the current Rule, a pre-approved work  
9 plan is ranked based on the date that that is approved by  
10 the agency, and the new Rule changes it so that each  
11 application is ranked rather than going back to the  
12 original ranking of the pre-approved work plan, which is  
13 clearly problematic for owner/operators and also seems  
14 like it would push people away from doing the pre-approved  
15 work plans.

16           MR. MC NEELY: And that's not the intention of  
17 the language. Now, we'll have to look at it and see if we  
18 can clarify it.

19           MS. MARTINCIC: It's been identified by  
20 Stakeholders as a very significant issue.

21           The other problem is that, because of their  
22 changing the ranking points, the priority ranking points,  
23 as a site becomes cleaner, you're going to lose your place  
24 in ranking, which also seems contrary, because you're  
25 penalizing owner/operators for doing what they should be

1 doing, which is cleaning up sites and getting them to  
2 closure. And so it's almost a disincentive for an  
3 owner/operator to proceed in that course because you're  
4 going to lose your ranking because the risk of that site  
5 will go down as it's cleaned up further, so therefore  
6 they're not going to get paid.

7 MR. MC NEELY: The wasn't the intention. The  
8 intention was after site authorization is complete,  
9 whatever the ranking is at that point stays through the  
10 end of the project.

11 MS. MARTINCIC: That is not what the proposed  
12 Rule says, and under current SAF Rule, that's not the  
13 case, and so owner/operators and eligible parties are  
14 extremely concerned about these issues.

15 CHAIRPERSON CLEMENT: Thanks, Phil.

16 MS. MARTINCIC: The other issue associated with  
17 this has to do with the fact that an independent  
18 accountant has to prepare a balance sheet for a  
19 economically, financially challenged owner/operator. We  
20 did talk about this I know at previous Policy Commission  
21 meetings, and the agency felt that they addressed it by  
22 saying that it just has to be an independent accountant  
23 preparing a balance sheet, not a CPA, and that somehow  
24 reduces the cost of the owner/operator, but you still have  
25 the same situation.

1           Someone's not going to put the liability out  
2 there on a balance sheet without charging something.  
3 Depending on the size of the company, you know, you could  
4 be talking anywhere from 5 to \$20,000 to show economic  
5 need, which seems a bit ironic in my book, and it's my  
6 understanding in the past the agency actually covered that  
7 expense for financially needy owner/operators.

8           MR. MC NEELY: And will get credit for his costs.

9           CHAIRPERSON CLEMENT: I guess the point I'd make,  
10 is these are the folks that need -- I mean, why they're  
11 going through that process is to get a financial score and  
12 a financial ranking so that they can be paid first. And  
13 so if you're going to cover costs later, they're still  
14 going to be out the money, and these are the most  
15 financially needy people, so it seems a little bit of a  
16 catch 22.

17          MS. MARTINCIC: Karen.

18          MS. GAYLORD: I have to say, Phil, having gone  
19 through this process three times with companies that --  
20 one of which was defunct and two of which were unable to  
21 cover their share of costs and wanted to explore state  
22 leave, on the one hand, really there is some complex  
23 financial information that an owner/operator either can't  
24 adequately explain to the agency without the help of an  
25 accountant and which the agency can't really understand

1 without the help of an accountant. I don't want to see  
2 the burden placed on the small owner/operator at all.

3 I've looked at this provision of the Rule myself  
4 to try to figure out whether it places a greater burden  
5 than the previous rule. It may, but I don't think it  
6 places a greater burden than what was actually happening.  
7 In each of the cases that I have personal experience with,  
8 we did have to get an accountant to prepare some balance  
9 statements and to put the financial information in order,  
10 so I have to say just that I do have some --

11 MS. MARTINCIC: They're not in current ranking  
12 right now; this is prior when there was ranking?

13 MS. GAYLORD: In one case, we had ranking, but in  
14 the other case it was a similar circumstance where we were  
15 exploring state leave options, but the exchange of  
16 financial information was exactly the same. It was a case  
17 where we really needed an accountant to put financial  
18 information into order.

19 MS. MARTINCIC: I wondered if there was a  
20 distinction, if it was to go to state leave. It's my  
21 understanding when the agency did ranking prior, the  
22 agency actually covered those costs for those financially  
23 needy owner/operators, which is completely different from  
24 what this proposed Rule is calling for.

25 MS. GAYLORD: My understanding is the current

1 Rule would give a credit for the cost. My experience in  
2 the past was the agency actually had its own subcontractor  
3 accountant do the work. And there are pros and cons to  
4 that as well, because the agency's subcontractor  
5 accountant quite frankly may not be able to understand the  
6 financial information as well as the applicant's own  
7 accountant could, so there are pros and cons to that  
8 approach from the small owner/operator. They have to  
9 front the cost. That's the economic impact. They get the  
10 money back, they get reimbursed, but they have to front  
11 the cost of their own accountant, and for the small  
12 owner/operator, I think it's sort of case specific about  
13 rather they'd rather hire their own accountant rather than  
14 be forced to go through the department.

15 CHAIRPERSON CLEMENT: One of the options here is  
16 you could make that up, you know, so they would have that  
17 choice themselves. I just hate to dictate this because,  
18 like I said, it's a site-specific situation.

19 MS. GAYLORD: I think it is.

20 MS. MARTINCIC: You know, it's a change from the  
21 way that the current rule is operating in the past with  
22 ranking, and for the agency to say that these changes  
23 don't create economic impact on owner/operators and  
24 eligible parties, you know, it's not true. And there are  
25 significant impacts, potential impacts. We just don't

1 know them because we're not ranking right now, but with  
2 the program being phased out, eligibility ending less than  
3 nine months away, I think we need to really think long and  
4 hard before we make these kinds of significant rule  
5 changes. So, these were the issues that folks had in  
6 terms of ranking and the proposed rule changes dealing  
7 with ranking.

8 MS. PASHKOWSKI: Can you clarify what you meant  
9 by eligibility ending in nine months?

10 MS. MARTINCIC: Yeah, the phase-out eligibility  
11 to the program ends June 30th, 2006.

12 MR. MC NEELY: For new releases, they still got  
13 four years.

14 MS. MARTINCIC: To do the application, but are  
15 not eligible for the SAF after June 30th, 2006.

16 MR. MC NEELY: We are going to be cleaning up for  
17 the next five years.

18 MS. MARTINCIC: I apologize. I'm not an  
19 attorney, so sometimes I speak out of turn, but my  
20 understanding is that owner/operators cannot go to the  
21 Fund after June 30, 2006. I left off the new releases.

22 MR. MC NEELY: These rules will still be  
23 effective for all the other releases that we have today.

24 MS. MARTINCIC: I will be corrected.

25 CHAIRPERSON CLEMENT: I think we've got that.

1           MS. MARTINCIC: The final issue that everyone  
2 identified had to do with certification language, and I  
3 don't know that this necessarily would fall under economic  
4 impact. That's why we kind of addressed it as "Other".  
5 But in the Rule, there is -- on page 3044, there is a list  
6 of items that your, basically, eligible parties have to  
7 certify and notarize, and it's really kind of a language  
8 issue because you're basically having to certify and  
9 notarize that the UST has never had naptha-type jet fuel  
10 placed in the UST system, and the problem is, is that the  
11 language that says to the best of our information and  
12 belief is not covering all of those items A through G.  
13 It's listed as just an item under G. And stakeholders  
14 felt that really ought to be applied in the beginning  
15 under A, where it's talking about the signed and notarized  
16 statement of the eligible person, and add to the best of  
17 their information and belief should be added, because, you  
18 know, you may not know of a prior use of that tank for one  
19 of those items, and you'd be certifying and notarizing it,  
20 so that was just an issue that the stakeholders picked up  
21 and we're hoping might be addressed.

22           CHAIRPERSON CLEMENT: Anybody -- I mean, I know I  
23 have spent literally -- I do not work in the State  
24 Assurance Fund. I've spent hours and hours trying to  
25 understand this Rule and put some materials together so

1 that we would be briefed enough to actually discuss it in  
2 the Commission. So I know this is a whole lot of stuff  
3 and I know this is quite complicated.

4 Are there any other questions or comments?  
5 Because what I've done is I've prepared a letter to the  
6 Director and we need to go word by word through that  
7 letter to see where we can have a consensus that we  
8 support certain observations or certain comments and where  
9 we don't, and then we can do a vote on this.

10 Ms. Gaylord?

11 MS. GAYLORD: I guess my overriding question or  
12 comment, maybe, is that these are documents that were  
13 gathered during a lot of hard work during the  
14 subcommittees from stakeholders, so it seems legitimate  
15 that we should forward them. And I'm wondering, we're  
16 going to forward them, but perhaps ask the Policy  
17 Commission to weigh in on individual issues or are we  
18 going to endorse the entire position on the entire list of  
19 issues?

20 Here's my thought. There are three of these  
21 concerns that I share and feel strongly about. There are  
22 others -- there are two others, at least, where I don't  
23 share the concerns that's in the list of comments. And  
24 then there is some others where I feel very ambivalent,  
25 pros and cons, so I wouldn't like a letter to say that

1 we've all personally endorsed every single comment, but I  
2 feel like the stakeholders' concerns should be passed  
3 forward and DEQ should have the opportunity to respond and  
4 comment to the extent they were strongly held concerns the  
5 stakeholders expressed.

6 In a couple of instances beyond that approach, in  
7 a couple of instances, I see cases where we've expressed a  
8 concern and there might be a possible proposal we could  
9 make that might be a proper approach.

10 For instance, on the seal, it seems to me that it  
11 would be helpful for us to discuss, during your discussion  
12 of your letter, the possibility that we would simply  
13 propose to DEQ that they take the information out, make it  
14 a sealed attachment with the backup that's necessary so  
15 there is no seal on the form.

16 On the certification language, which is another  
17 one that I share, we should propose that that language be  
18 included and maybe ask the Policy Commission members  
19 whether we would all agree on that type of proposal to the  
20 extent that we can make that kind of proposal and say, the  
21 Policy Commission, it might help us to move forward and  
22 help DEQ, too, to respond quickly to comments and get the  
23 concerns out of the way.

24 CHAIRPERSON CLEMENT: I share your dilemma as we  
25 were going -- as I was trying to figure out how to do

1 this, because it is complicated and we're not going to get  
2 unanimity amongst ourselves on these issues.

3           What I did was I wrote basically two general  
4 comments, and then I listed these so that we could attack  
5 them on an individual basis or discuss them on an  
6 individual basis.

7           So, take a look at this letter, but I think your  
8 suggestion about attaching the full document as an FYI  
9 whether we can -- because I don't -- I did not believe  
10 when we started this that we would probably be able to  
11 agree on this full document or even a majority of us.

12           So, we can use the letter to say, also attached  
13 is a summary of comments received by the stakeholders for  
14 your information, rather than saying we endorse all of  
15 these. But I do think that we need to have specific  
16 comments about specific aspects of the Rule, and if we can  
17 suggest solutions, great, in this amount of time that we  
18 have. If we can't, we basically have to turn this in by  
19 the 30th. I want to get this out tomorrow, so we don't  
20 have a lot of time. And a lot of work went into getting  
21 this far. So, let me pass this language out. There is no  
22 pride of authorship here, and we're just going to have to  
23 take it step by step.

24           And I'll point out that the RE, if anybody has  
25 got any edits, you can e-mail them and give me -- I'm not

1 an attorney -- you can give me your comments on edits  
2 later.

3           But the first substantive point we make is in the  
4 first paragraph before the bulleted items, and in this  
5 paragraph we say, "In general, we are concerned about the  
6 effects of implementing a lengthy, complex and  
7 controversial set of rules when the SAF program is  
8 scheduled for phase-out."

9           That is an overriding concern I think of all the  
10 stakeholders that I've spoken with individually and/or  
11 participated in any of the meetings that I participated  
12 in. And I would like to be able to insert a general  
13 comment of this nature, if possible, in our letter.

14           So, are there any comments on that language or in  
15 the concept of that type of language?

16           MS. PASHKOWSKI: Gail, I don't know that I have a  
17 concern about that particular language if the first  
18 sentence maybe is amended, because it would lead one to  
19 believe, and obviously we haven't voted yet, but it would  
20 lead one to believe that every member of the Commission  
21 voted in agreement with these comments, and I'm not sure  
22 that's going to be the case.

23           CHAIRPERSON CLEMENT: I don't think it will be  
24 the case, but how we've handled our votes in the past is  
25 we actually take a vote, and I think we will probably have

1 to do this on each portion of the specific language, and  
2 the majority rules. I mean that's the --

3 MS. PASHKOWSKI: You might want to indicate that  
4 in the first sentence.

5 MS. MARTINCIC: We can certainly add that. We  
6 would be striking the issues that people don't vote in  
7 support of, so even if that language --

8 MS. PASHKOWSKI: I thought you were going to  
9 forward this all to --

10 CHAIRPERSON CLEMENT: No, no.

11 MS. MARTINCIC: That's why we're going line by  
12 line through the letter.

13 CHAIRPERSON CLEMENT: What I would like to do is,  
14 please, this is going to be a complicated process so chime  
15 in here. But what I would like to do is take each section  
16 of this and see if we have consensus of the participants  
17 in the meeting today. If we don't, then we can massage  
18 the language or we can omit it, but the vote is, does  
19 everybody agree with the first paragraph, basically. And  
20 if you don't, we will take a number and majority rules is  
21 how we usually run this Commission. If that's a problem,  
22 let me know now, because we want to --

23 MS. MARTINCIC: This is how we handled the  
24 comments that the Policy Commission sent forth in January  
25 to the Director on the draft SAF Rule, and we had a list

1 of issues. We went through issue by issue, discussed it.  
2 Some of them fell off the list because they weren't  
3 considered as primary to all the Policy Commission  
4 members, and we encouraged those in the public audience  
5 and other Commission members, who do feel it's important  
6 to submit their own written comments, but as a Policy  
7 Commission, we went through each issue to make sure  
8 everyone was in agreement that that was of a priority to  
9 include in a letter to the Director.

10           So, I mean, correct me if I am wrong, Gail, but I  
11 was figuring that as the process we would use today as  
12 well since we did that a year ago.

13           CHAIRPERSON CLEMENT: And every time we've  
14 submitted anything to the Director that had any  
15 complexity, we've handled it in that way. So, I mean, I  
16 will be happy to insert a sentence saying that not  
17 everyone was unanimous.

18           MS. PASHKOWSKI: I think you can simply say,  
19 "Pursuant to our statutory requirements, A.R.S. Section  
20 49-1092, the majority of the Arizona Underground Storage  
21 Policy Commission voted."

22           CHAIRPERSON CLEMENT: Thank you. Those are the  
23 kind of suggestions that are helpful to me, so -- but  
24 getting to the topic at hand, does anybody have concern  
25 with the language in that first sentence as drafted or

1 with the concept of that?

2 MS. MARTINCIC: I have no problem with it.

3 CHAIRPERSON CLEMENT: Okay. Should we move on?  
4 Should we take a vote?

5 MS. MARTINCIC: You want to vote on each section?  
6 Does everyone agree with that?

7 CHAIRPERSON CLEMENT: All in favor of the draft,  
8 the language drafted in the first paragraph of this  
9 September 29th, 2005 dated letter to Director Owens with  
10 the insertion that Barbara Pashkowski proposed, which is  
11 in the first line after the word "the", "the majority of  
12 the" will be inserted, Arizona Underground Storage Tank  
13 Policy Commission, and that's what we're voting on.

14 All in favor?

15 (Chorus of ayes.)

16 CHAIRPERSON CLEMENT: I need a second.

17 MS. MARTINCIC: I will second it.

18 CHAIRPERSON CLEMENT: Second. All in favor?

19 (Chorus of ayes.)

20 CHAIRPERSON CLEMENT: All opposed?

21 MR. MC NEELY: I abstain.

22 CHAIRPERSON CLEMENT: One absent.

23 And that's fine. I mean, and, Barbara, you are  
24 welcome to abstain. That's what Tamara usually does, so I  
25 don't want you to get caught up in anything here.

1           Let's go on to the next bullet point,  
2 Retroactivity. This is obviously very key. "The proposed  
3 Rule will be applied to SAF applications received by the  
4 Arizona Department of Environmental Quality prior to the  
5 effective date of the Rule. Fundamentally, retroactive  
6 standards are unfair."

7           MR. MC NEELY: I have a comment on this, Gail.  
8 It's not accurate. We changed the language, I think in  
9 the comment that we saw today, applications before we --  
10 before the rules were implemented, the applications, old  
11 rule. After the rules are printed, applications received  
12 will be -- the new rule will apply.

13           I think the main issues I heard today was all the  
14 old releases, the 1800 releases we have. Once the new  
15 rule goes into effect, those releases will be covered, so  
16 I think that's a retroactive activity that you guys are  
17 talking about, because I changed the language last time to  
18 make sure.

19           MS. MARTINCIC: You provided language to us at  
20 the last joint Financial and Technical Subcommittee  
21 meeting on the issue of resubmittals, and we specifically  
22 asked about retroactivity of that provision specifically,  
23 and we were told that the agency, yes, it does apply  
24 retroactively, and I know representing, you know, small  
25 and mid-size owner/operators on this Commission, this is a

1 huge issue for us, and I feel that it must be included in  
2 this letter to the Director.

3 MR. MC NEELY: I think you need to clarify it.  
4 This language, if you read it, it sounds completely wrong,  
5 the first sentence. You've got to clarify what you mean,  
6 I think, because applications received before the  
7 effective date of the Rule does not apply. The Rule is  
8 not application. Applications received after the  
9 effective date of the rule, it applies.

10 MS. PASHKOWSKI: With the clarification, though,  
11 I think -- and I think, Gail, you attempted to clarify  
12 this at the last Financial Subcommittee meeting, that if  
13 you submitted the first application before the effective  
14 date of the Rule, and you had costs in there that were  
15 denied, then you take those costs after the effective date  
16 of the Rule and try to resubmit them, they are going to be  
17 denied as resubmittal.

18 MR. MC NEELY: Right. Everything applies after  
19 the effective rule.

20 CHAIRPERSON CLEMENT: Right.

21 Ms. Foster?

22 MS. FOSTER: There is another side of this that I  
23 don't think we're talking about here. If it takes me a  
24 year and a half to put my application together and the  
25 work has previously been done under reimbursement, if I

1 submit it the day after these new rules go into effect,  
2 then the new regulations would apply to it even though the  
3 work was previously done. I think that hurts the  
4 owner/operator.

5 MS. PASHKOWSKI: It's triggered by the submission  
6 of an application.

7 MS. FOSTER: So if it takes me two years to  
8 complete all the paperwork, get all the work done in the  
9 field, if I turn it in a day after the rules go into  
10 effect, I'm hindered because I have to follow the new  
11 rules?

12 MR. MC NEELY: Right. That's absolutely correct.

13 MS. PASHKOWSKI: I'm assuming you are going to  
14 submit corrected applications, and you won't have  
15 resubmittal costs.

16 CHAIRPERSON CLEMENT: That's because she's  
17 perfect and none of the rest of us are.

18 I think really your point is that the proposed  
19 Rule will be applied to SAF releases received prior to the  
20 effective date of the Rule. But that clarification, I'm  
21 still confused about what you just said, Barbara, and I'm  
22 sorry, I just don't understand. Could you just repeat it?

23 MS. PASHKOWSKI: I think it simply means that  
24 when the Rule goes into effect and you submit an  
25 application, and it's your first application, your very

1 first application, okay, and you have denied costs, and  
2 then six months later you take those denied costs, this is  
3 all post-effective date of this Rule, six months later you  
4 take those denied costs, resubmit them, they are going to  
5 be denied. That's one scenario.

6 The second scenario, you have pre-effective date,  
7 today, you submit an application to the agency, they deny  
8 certain costs. You take those costs, and after this Rule  
9 becomes effective, you try to resubmit them. That is a  
10 resubmittal and they will be denied.

11 CHAIRPERSON CLEMENT: Okay.

12 MR. MC NEELY: Yes.

13 MR. GILL: But, Gail, I think that the problem is  
14 that the language is based on the application date  
15 submittal, but as Theresa Foster mentioned, the problem is  
16 the work, when the work was done -- I mean, it's always  
17 been based on -- in the past on the SAF Rules, cost  
18 ceilings, and things like that at the time that the work  
19 was being done, because after this Rule goes into effect,  
20 there is a lot of things that will affect the work that  
21 was done previously that we -- we were following the rules  
22 and regulations that were in effect at that time, and now,  
23 because our application's turned in, that's all wiped out.  
24 To me, that's what the issue was.

25 MS. PASHKOWSKI: That's not correct.

1           CHAIRPERSON CLEMENT: Ms. Gaylord?

2           MS. GAYLORD: I think if we amended the sentence  
3 in this Retroactivity paragraph as follows, it might be a  
4 correct statement issue.

5           "The proposed Rule will be applied to SAF  
6 applications received by the Arizona Department of  
7 Economic Quality after the effective date of the Rule,  
8 even where the work was conducted and the costs incurred  
9 before or prior to the effective date of the Rule."

10          MR. GILL: Great.

11          MS. GAYLORD: I think that's an accurate  
12 statement of the retroactivity issue.

13          CHAIRPERSON CLEMENT: Could you repeat that?

14          MS. GAYLORD: "The proposed rule will be applied  
15 to SAF applications received by the Arizona Department of  
16 Environment Quality" -- insert "after" and strike "prior  
17 to".

18          CHAIRPERSON CLEMENT: Okay.

19          MS. GAYLORD: And then continue, "the effective  
20 date of the Rule", and then insert "even where the work  
21 was conducted and the costs incurred prior to the  
22 effective date of the rule". And to make that clearer,  
23 you could say it's the work conducted and the cost  
24 incurred, you could clarify by saying that it's the work  
25 and the costs that are subject of the application.

1           CHAIRPERSON CLEMENT: And then does that capture  
2 the issue about resubmittals that Barbara brought up?  
3 Because I think that is a really -- I mean, from the  
4 stakeholders.

5           MS. GAYLORD: I believe it does, because the  
6 application after the effective date of the Rule is going  
7 to be subject to the new Rule.

8           CHAIRPERSON CLEMENT: Let me reread that and make  
9 sure we all have the same language and I copied it  
10 correctly.

11           "The proposed Rule will be applied to SAF  
12 applications received by the Arizona Department of  
13 Environmental Quality after the effective date of the Rule  
14 even where the work was conducted and the costs incurred  
15 prior to the effective date of the Rule."

16           That's correct? Okay.

17           MS. PASHKOWSKI: "Where the work was conducted  
18 and the costs incurred."

19           CHAIRPERSON CLEMENT: "Prior to the effective  
20 date of the Rule."

21           Then the second sentence, any changes on the  
22 second sentence? Okay. Any other discussion?

23           Does anyone want to move to approve this language  
24 as amended?

25           MS. MARTINCIC: I move we approve the amended

1 language as stated by Karen Gaylord.

2 CHAIRPERSON CLEMENT: Second?

3 MS. FOSTER: Second it.

4 CHAIRPERSON CLEMENT: All in favor?

5 (Chorus of ayes.)

6 CHAIRPERSON CLEMENT: All opposed?

7 MR. MC NEELY: Abstain.

8 MS. PASHKOWSKI: I want to make sure I know what  
9 I'm voting on. Are you just voting on how you amended the  
10 language? You're not voting on the whole concept yet?

11 MS. MARTINCIC: The amendment, then we will vote  
12 on the statement.

13 CHAIRPERSON CLEMENT: We're voting on the  
14 amendment. Okay. So the ayes have it. Okay.

15 MS. MARTINCIC: Now, I move that we accept the  
16 amended language.

17 CHAIRPERSON CLEMENT: Do I have a second?

18 MR. SMITH: I will second it.

19 CHAIRPERSON CLEMENT: All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: All opposed? Barb?

22 MS. PASHKOWSKI: Opposed.

23 CHAIRPERSON CLEMENT: One opposition. Motion  
24 carried.

25 MR. MC NEELY: Abstain.

1           CHAIRPERSON CLEMENT: And one abstinence. Sorry.  
2 You've got to find levity somewhere.

3           Okay. Onward. Economic Impacts. Thanks all for  
4 doing this, because this is the only way to get it done.  
5 And I know it's burdensome and lengthy, but we've got to  
6 do it this way.

7           "The proposed Rule will result in substantial  
8 economic impacts on owners and operators and other  
9 eligible parties." Any comments, questions?

10          MR. MC NEELY: I have a comment. The "will" in  
11 both these sentences, you guys think and may -- you are  
12 not really sure, even Andrea said she's not sure. We're  
13 not doing ranking now. She thinks it will in the future,  
14 but it sounds -- I think it would be more accurate to say  
15 "may result", because we disagree with a lot of this.

16          MS. MARTINCIC: I would like to be on record  
17 saying that I will submit comments, detailed comments of  
18 economic impacts, and I don't believe that I ever said a  
19 thing. I do believe that it will result in substantial  
20 economic impacts for all the parties involved in this  
21 rule. I just want to be on the record saying that, but I  
22 appreciate your concern about the language and the  
23 recommendations to the Director.

24          CHAIRPERSON CLEMENT: Ms. Gaylord?

25          MS. GAYLORD: Well, I guess I, like I said, don't

1 share a couple of the concerns in the letter, and those  
2 are ones that I think we might differ on about whether or  
3 not there is a economic impact.

4 I guess I wonder -- I mean, I know you've done a  
5 lot of work on this and it's due soon, and so I hate to do  
6 much that's going to cause hours of work. But, honestly,  
7 I think a lot of us -- I'm guessing that a lot of us will  
8 share concerns on some of these issues. By putting them  
9 all under the -- by characterizing them all as having an  
10 economic impact, I think that's where I have trouble.  
11 Because certification --

12 MS. MARTINCIC: Maybe what we ought to do is  
13 start on the list first.

14 MS. GAYLORD: Because honestly, I have concerns  
15 about some of the individual issues but not because they  
16 have an economic impact.

17 MS. MARTINCIC: That's why our language changed  
18 in that first paragraph to say that it was a majority of  
19 the Commission. Once we're done with the letter, after we  
20 voted on everything, technically it's going to be, you  
21 know --

22 MS. GAYLORD: Certification is an issue but  
23 perhaps not an economic impact.

24 CHAIRPERSON CLEMENT: I agree with you, Karen.

25 MS. MARTINCIC: Let's look through the list, then

1 go back to the general language.

2 CHAIRPERSON CLEMENT: Any problems with going  
3 through the list first? I just made a laundry list. I  
4 did not expect you to all agree on this laundry list.

5 Okay. The first issue is SAF eligibility. And  
6 you will note that I did not try to put language in here  
7 that would correct the problem or give a lot of  
8 explanation, because, frankly, we just can't get there  
9 right now.

10 So, on this first bullet item, are there comments  
11 and discussion? Ms. Gaylord?

12 MS. GAYLORD: On this one, I would say the  
13 economic impact that we laid out is the likelihood of  
14 additional appeals, but in this one we're saying there is  
15 no right to appeal. So in this one it really doesn't  
16 match. It doesn't match our -- we're saying that we want  
17 the rule to include the right of appeal, which really is  
18 the direct opposite of the economic impact we're concerned  
19 about, so this one I would say, we might want to identify  
20 --

21 MS. MARTINCIC: I don't understand what you are  
22 saying, because I think that first comment is that there  
23 is no way to reestablish eligibility within the proposed  
24 Rule, but I don't see where you are connecting that to  
25 this.

1 MS. GAYLORD: The only point we discussed so far  
2 at least is that we'd like the Rule to include a right to  
3 appeal an eligibility determination. We haven't really  
4 discussed yet the substance of whether you really are  
5 going to be more likely to be rendered ineligible under  
6 the new Rule than you would have been under the old Rule.

7 So, at least as to the written comment here that  
8 we want a right to appeal, I was just saying that that may  
9 not necessarily match the economic impact. It may be that  
10 we want to identify what the specific problems  
11 stakeholders have is.

12 MS. MARTINCIC: You are referring to the second  
13 provision under eligibility?

14 MS. GAYLORD: Yes.

15 MS. MARTINCIC: Okay. Because I think the first  
16 provision under eligibility is kind of important. There  
17 is no way to reestablish eligibility if you are denied.  
18 If your application is considered incorrect because you  
19 are ineligible, there is no process within the proposed  
20 SAF Rule to become eligible.

21 CHAIRPERSON CLEMENT: That would have a major  
22 economic impact if you were ineligible for expended funds  
23 and you can't even go to the first base on that one.  
24 That's, I think, the point on that one.

25 MS. GAYLORD: Okay.

1           MS. MARTINCIC: So, I mean, maybe we strike the  
2 second citation, just have it say SAF eligibility in the  
3 first section.

4           I think SAF eligibility is an important economic  
5 impact because it clearly goes to who is eligible to  
6 receive SAF funds, which I don't think it gets much more  
7 direct to do an economic impact on that one. That's just  
8 my two sentences.

9           MS. GAYLORD: I would agree that if there was  
10 more limited eligibility, we would absolutely be  
11 concerned, and I did spend a little time with the Rule and  
12 may not just have correctly identified. I couldn't really  
13 identify that there was going to be more limited  
14 eligibility in a significant way, so I may just have  
15 missed that.

16           MS. MARTINCIC: I just think that stakeholders  
17 thought that this was an important issue.

18           CHAIRPERSON CLEMENT: But we have to -- I mean,  
19 we have to have enough comfort here that what we're  
20 submitting to the Director is our recommendation. We're  
21 going to also attach this document, or something similar  
22 to it, which this is all we've got, we are going to attach  
23 this document and say that this is the stakeholders'  
24 issues identified.

25           So, I would want us to be comfortable that we

1 know what we are voting on and that we either agree or  
2 don't agree, and just get it done.

3 So, how do you want to handle this? Should we  
4 take each citation separately and see whether it should be  
5 included in this or not? Any comments?

6 MR. GILL: If you want to be comfortable.

7 CHAIRPERSON CLEMENT: I think everybody has a  
8 right to --

9 MS. MARTINCIC: Let's do that.

10 CHAIRPERSON CLEMENT: Okay. Under SAF  
11 eligibility, the first citation is R18-12-601(C). Is  
12 there a recommendation to continue to include this in the  
13 letter to the Director?

14 MS. MARTINCIC: I move that the citation be  
15 included as well as SAF eligibility as an economic impact.

16 CHAIRPERSON CLEMENT: Is there a second on that?  
17 Ms. Gaylord?

18 MS. GAYLORD: That's okay.

19 MR. FINDLEY: I will second it.

20 CHAIRPERSON CLEMENT: Jon seconded it.

21 We have a motion now to include SAF eligibility  
22 §18-12-601(C).

23 We will take a vote. All in favor?

24 (Chorus of ayes.)

25 CHAIRPERSON CLEMENT: All opposed?

1 MS. PASHKOWSKI: Yes.

2 CHAIRPERSON CLEMENT: Ms. Pashkowski, yes.

3 MR. MC NEELY: Abstain.

4 CHAIRPERSON CLEMENT: Mr. McNeely abstains. He's  
5 in abstinence mode again.

6 The ayes carry it, so that citation will be  
7 included in the letter.

8 Okay. The next citation is R-18-12-611(B) under  
9 SAF eligibility. Open for discussion, comments, questions  
10 at this point in time.

11 Ms. Gaylord, I think you had your hand raised.  
12 Was that for this one?

13 MS. GAYLORD: No. I just wasn't sure about the  
14 vote on the last one. My point was only that I didn't  
15 think that it was necessarily -- that SAF eligibility was  
16 necessarily primarily an economic impact argument. And so  
17 the vote, what you asked for, what should be included in  
18 the letter, and I have no problem with that.

19 CHAIRPERSON CLEMENT: Okay. The next citation,  
20 any comments, discussion, again, R-18-12-611(B), is there  
21 a motion to approve this citation?

22 MS. MARTINCIC: I move that it's approved,  
23 because I worked through this process for all these  
24 meetings, and I think it was identified and I think it's  
25 an important issue, so I will move that the Policy

1 Commission include citation R-18-12-611(B) to the letter.

2 CHAIRPERSON CLEMENT: Is there a second?

3 MR. GILL: Second.

4 CHAIRPERSON CLEMENT: Mr. Gill seconded. Ms.

5 Gaylord?

6 MS. GAYLORD: I apologize. I really do feel like  
7 I probably shouldn't even disagree with these because I  
8 didn't do the work in the subcommittee, Andrea, and I do  
9 apologize. I was not able to attend the subcommittee, and  
10 so I do feel --

11 MS. MARTINCIC: You shouldn't apologize. I don't  
12 think that -- you know, we have important roles on this  
13 Commission and we represent constituencies, and this  
14 proposed SAF Rule in my opinion represents my membership,  
15 which is small, mid-size tank owners in this state is  
16 going to have severe impact on them. So, you know, I was  
17 involved through this whole process, and I know other  
18 Commission members were, and I know that it's difficult to  
19 be as involved as we want to be, but, you know, you need  
20 to vote your conscience on these issues, too. So don't  
21 apologize if you are concerned about an issue, but I'm  
22 moving these forward because I was involved and I do feel  
23 that these are important issues. I will just leave it at  
24 that.

25 CHAIRPERSON CLEMENT: And if you're not

1 comfortable, don't vote for them. I mean, you know, I  
2 just -- we have to know what we're voting on, and we have  
3 to agree to it, and if you're not going to agree to it,  
4 it's fine to not vote for something. I mean, really,  
5 there is nobody's hands tied behind their back here.

6 So, Ms. Gaylord.

7 MS. GAYLORD: For what it's worth, and so it's  
8 duly noted, I don't share the concerns in this section. I  
9 believe that we want DEQ to have some fundamental  
10 standard, that the work chosen, the approach would be most  
11 cost effective.

12 I did spend time with the Rule to see whether we  
13 had it figured that the new Rule created a problem with  
14 DEQ later going back and saying in hindsight it wasn't the  
15 most cost-effective approach. I don't think the new Rule  
16 changes the fact that DEQ can do that. It could have done  
17 it under the old Rule. On the middle item, we have  
18 discussed that middle item in statement D in past  
19 meetings.

20 MS. MARTINCIC: Karen, I think you are on a  
21 different topic. We're still on eligibility and it's the  
22 reference 18-12. If you look on the list of issues on  
23 page 2, this has to do with limiting third-party  
24 eligibility.

25 MS. GAYLORD: Well, I thought we moved on.

1 CHAIRPERSON CLEMENT: Okay.

2 MS. MARTINCIC: Maybe we need to clarify what  
3 we're voting on -- what we would be voting on is that I  
4 moved and that Hal seconded is that citation 18-12-611(B)  
5 under SAF eligibility on page 2 of our handout and  
6 identified by stakeholders in the joint Technical and  
7 Financial Subcommittees, which deals with language in the  
8 proposed Rule which stakeholders feel limits third-party  
9 eligibility for formal appeal.

10 And the concern is that in the current statute,  
11 third parties can go to formal appeal, and the concern is  
12 that the language in the proposed Rule could prevent that.  
13 So that's the motion that I move that we include that  
14 language under SAF eligibility.

15 CHAIRPERSON CLEMENT: And Hal Gill seconded that  
16 motion.

17 Hal, could you just confirm that?

18 MR. GILL: That's right.

19 CHAIRPERSON CLEMENT: All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: All opposed?

22 Barb Pashkowski. Abstaining, Mr. McNeely.

23 The ayes have it.

24 Now, I think we're to the issue that Karen was  
25 talking about. I know this is burdensome. I don't see

1 any other way to do it, you guys.

2           Scope and Standards of Review. Okay. The first  
3 citation that's quoted is R-18-12-608(C). Actually it's  
4 the only one, so I think we can take 608 off.

5           I move that we take -- there is a problem with  
6 the letter. Since I drafted the letter, I've identified a  
7 problem with the letter. I don't think you have to vote  
8 on it because I've identified a problem. Just start with  
9 608(C). The first citation, 608, is too general. We need  
10 to go to 608(C) because that's really what we're talking  
11 about here.

12           And that includes all of the language under page  
13 3 on page 2 of the list of stakeholder issues prepared by  
14 the subcommittees. That includes all of the issues  
15 identified under the page 3061 R-18-12-608(C) and then the  
16 three sub bullets under that.

17           MS. MARTINCIC: I wonder if what we ought to do,  
18 since it sounds like there may be some concern with  
19 specific statements within 18-12-608(C), if we go off of  
20 our worksheet list, and because we've got them divided up,  
21 so if someone has an issue with statement A, B, statement  
22 D, statement H, that can be removed and the other could be  
23 inserted into the language if there is agreement on it.

24           CHAIRPERSON CLEMENT: Okay. And that's where you  
25 were, I believe, Karen.

1 MS. GAYLORD: If I may, yeah, I think we probably  
2 should just attach the letter as it is rather than  
3 amending it. It reflects --

4 MS. MARTINCIC: I don't mean in the letter. I  
5 meant be a little more specific on the citations here so  
6 that if people have concerns about specific sections  
7 within the scope and standard of review, identified  
8 issues, we could leave those out but include ones that  
9 people are in agreement with.

10 MS. GAYLORD: What I was going to say is, I think  
11 we should include the three-page summary of comments as it  
12 is, and your letter doesn't raise -- your letter just says  
13 C, so --

14 MS. MARTINCIC: Right. And my point is, if  
15 people have specific issues within C and feel that those  
16 specific subsections should not be included but yet we  
17 have an agreement on some of the other subsections, they  
18 ought to be included, that was my point. Instead of  
19 throwing the baby out of the bath water, dissect the baby  
20 so to speak.

21 CHAIRPERSON CLEMENT: Any comments or discussions  
22 on that? Okay. This is really a lot of fun.

23 Let's break it down. Ms. Pashkowski, for the  
24 record, I hate to see you go, but I understand that you  
25 have to leave.

1 MS. PASHKOWSKI: I do.

2 CHAIRPERSON CLEMENT: Ms. Pashkowski is leaving  
3 the room very shortly, and we will miss your presence, so  
4 thank you for participating.

5 We are going to keep rolling if that's okay.

6 MR. MC NEELY: Fine.

7 CHAIRPERSON CLEMENT: On the suggestion of Andrea  
8 Martincic, and I think with the concurrence of the other  
9 members of the panel that are -- the Commission members  
10 that are still here, we will break this citation 608(C)  
11 into the three sub-bullets we have on a stakeholder list,  
12 and the first one is statements A and B, and that I think,  
13 Karen, Ms. Gaylord, was your concern regarding the most  
14 cost-effective. You had a concern about that language,  
15 and you did not agree with it. I don't want to put words  
16 in your mouth, but you did not necessarily agree with  
17 these statements?

18 MS. GAYLORD: Right.

19 CHAIRPERSON CLEMENT: Okay. Any other discussion  
20 or comment or further point on that that anyone has?

21 MS. MARTINCIC: I'm going to move that that  
22 language be included, because I think it's important  
23 because it's changing the Rule, and it allows ADEQ to  
24 later determine that a remedial method may not be  
25 cost-effective and therefore not a cost, and I do believe

1 that creates an economic impact on owner/operators, so for  
2 what it's worth, I will move statements A and B under  
3 18-12-608(C) be included in our letter to the Director.

4 MR. GILL: Can I just make a comment, Gail, just  
5 to address Karen's concerns? Because I understand what  
6 Karen was saying in that she wants to make sure that the  
7 DEQ has the -- continues to have the option of determining  
8 whether a corrective action is counter-effective. But I  
9 think what this statement here is saying, Karen, is not  
10 that DEQ does not have that option, but that the option is  
11 done upfront. In other words, if you are doing a work  
12 plan, they will approve the work plan saying you are using  
13 a different extraction, and then later down the road, if  
14 they determine that that is not appropriate, we feel that  
15 this language here says they can go back and say, well,  
16 the work that you done previously, now we do not believe  
17 that that corrective action is appropriate. I think  
18 that's what the concern is of this language.

19 CHAIRPERSON CLEMENT: Ms. Gaylord?

20 MS. GAYLORD: I was commenting earlier, what I  
21 was going to say was that, Hal, my concern is, I don't  
22 believe that there is any more risk of the DEQ making that  
23 decision under this Rule than there was under the old  
24 Rule, and I agree that I would hate to see them make that  
25 decision and apply it retroactively with the hindsight

1 that comes at the end of a remediation.

2           So, my comment was, I didn't think this Rule  
3 created that problem, but I was going to suggest that we  
4 make a proposal that the Rule clarify that a determination  
5 be made at a specific point in time.

6           So, Hal, I echo your comment. I would see that  
7 as being very proactive here and it might head off this  
8 issue.

9           CHAIRPERSON CLEMENT: You know, I guess we have  
10 an hour and a half. We could take another half hour of  
11 your time. I don't see us being able to get a lot of  
12 suggestions out.

13           MS. GAYLORD: Okay.

14           CHAIRPERSON CLEMENT: I just don't see it  
15 happening. I mean, I agree it would be ideal if we could  
16 do that, and I think we would all be more than willing to  
17 sit down with the agency and have an interactive session,  
18 you know, with or without a quorum, at or not at a  
19 subcommittee meeting to further elaborate on these  
20 comments.

21           DEQ did participate in all the subcommission  
22 meetings. Phil was very helpful. Mr. McNeely was very  
23 helpful during those discussions, and I just don't think  
24 we're going to accomplish that, Karen.

25           We had a motion on the table, I think.

1 MS. MARTINCIC: Yes.

2 CHAIRPERSON CLEMENT: And we have a second from  
3 Hal. Let's take a vote now on this. There is no further  
4 discussion.

5 MR. MC NEELY: What's the motion?

6 MR. GILL: Which one are we voting on?

7 MS. MARTINCIC: Section 18-12-608(C) and under  
8 that, 1-A, B.

9 CHAIRPERSON CLEMENT: A and B.

10 MS. MARTINCIC: A and B to include to the  
11 Director.

12 MR. GILL: I don't remember seconding that one.

13 MS. MARTINCIC: It hasn't been seconded yet.

14 CHAIRPERSON CLEMENT: I'm sorry. I'm getting  
15 confused, which would be easy.

16 MR. GILL: I will second it now, though.

17 CHAIRPERSON CLEMENT: Okay. Thank you, Hal.

18 So everybody is now clear on the motion.

19 Okay. No further discussion. Okay. All in  
20 favor?

21 (Chorus of ayes.)

22 CHAIRPERSON CLEMENT: Anyone opposed?

23 Do we have an abstinence? Mr. McNeely has  
24 abstained.

25 Okay. On to the next citation. Now we are now

1 talking about R-18-12-608(C)(1)(D). Okay. And that is on  
2 page 2 of the stakeholder list.

3 MS. MARTINCIC: Hal, you might want to describe  
4 this one, because it has to do with scheduled corrective  
5 action costs, and the question about which schedule's used  
6 by DEQ when they're referencing it under statement D.

7 MR. GILL: Where is the -- let me find the  
8 comment. On page 2?

9 MS. MARTINCIC: Page 2 is the indented bullet  
10 point under Scope and Standards of Review. Starts out  
11 statement D.

12 MR. GILL: I'm flipping -- read this real quick  
13 here just to refresh my memory.

14 MS. MARTINCIC: Sure.

15 MR. GILL: Okay. I think there was some  
16 misunderstanding early on in the process of the costing,  
17 because I know that the majority of stakeholders, and  
18 including the consultants, believed that the -- that once  
19 the July 2005 cost schedule is in place, that that was the  
20 cost schedule from now until the time it is sunseted, the  
21 Fund sunseted. And in talking with most of the  
22 consultants, that's what they believed.

23 We come to find out after the fact that we were  
24 incorrect, we were reading that wrong, and that basically  
25 the cost schedule can be changed, we go through whatever

1 process is set up to make those changes, and so the  
2 concern is that, as stated on the second page, is that if  
3 you're --

4 MS. MARTINCIC: Which cost schedule is the agency  
5 going to use?

6 MR. GILL: Yeah. If you were doing -- if your  
7 pre-approval work plan or the work that you are doing,  
8 your reimbursement activity or the -- on the reimbursement  
9 application is that you have attached on there that it's  
10 changed in the future, then we're basically back to the  
11 retroactive problem again, and concerns whether the task  
12 has been taking away or cost changing.

13 MS. MARTINCIC: And then it would no longer be  
14 eligible?

15 MR. GILL: That was the concern, because we  
16 didn't realize at the time that we were looking at it that  
17 it could be changed.

18 MS. MARTINCIC: Okay.

19 CHAIRPERSON CLEMENT: Any questions for Hal on  
20 that? Any further discussion?

21 Is there a motion?

22 Hal, do you want to move that one?

23 MR. GILL: I will move that. I was trying to  
24 find which one we are taking here, 608 --

25 MS. MARTINCIC: (C)(1)D.

1 MR. GILL: -- (1)D be included in the letter.

2 MS. MARTINCIC: I will second that. I think that  
3 was a Technical Subcommittee addition during our joint  
4 meeting, so I will second that, Hal.

5 CHAIRPERSON CLEMENT: Any other comment? I guess  
6 we've already past the comment stage.

7 All in favor?

8 (Chorus of ayes.)

9 CHAIRPERSON CLEMENT: All opposed?

10 MS. GAYLORD: No.

11 CHAIRPERSON CLEMENT: The motion has it.

12 One abstinence. I'm sorry, Mr. McNeely  
13 abstains. The ayes have it.

14 Okay. The next item is R-18-12-608(C)(1)H. And  
15 we had some discussion on this as we went through the  
16 stakeholder list of issues. In my opinion this is a very  
17 significant issue, and is there any further discussion on  
18 this particular item?

19 MS. MARTINCIC: I agree. I think statement H  
20 under all of these is of the greatest importance, so I  
21 will move that we include statement H, 18-12-608(C)(1)H to  
22 the letter to the Director.

23 CHAIRPERSON CLEMENT: I will second that.

24 All in favor?

25 (Chorus of ayes.)

1 CHAIRPERSON CLEMENT: All opposed?

2 Any abstaining?

3 MR. MC NEELY: Aye.

4 CHAIRPERSON CLEMENT: Mr. McNeely is abstaining.

5 The motion passes. Okay. We are just moving  
6 right along.

7 Denial of Resubmittals. We have two items here  
8 under denial.

9 MS. MARTINCIC: Sorry. Do we need to have a vote  
10 about the definition to include substituted work item or  
11 not?

12 CHAIRPERSON CLEMENT: Yeah, we do. Sorry.

13 Okay. The next agenda item is R-18-12-101,  
14 definition for substituted work item. There was some  
15 discussion about this. Are there any questions or further  
16 discussion on this item?

17 MS. MARTINCIC: I guess, is the definition -- I  
18 don't know. Here, I play devil's advocate. Is the  
19 definition tied in enough with scope and standards of  
20 review that it should be listed under economic impact in  
21 the letter to Director?

22 CHAIRPERSON CLEMENT: I probably would not  
23 support that personally, but this is how I itemized them  
24 out so --

25 MS. MARTINCIC: Well, Hal, do you think that we

1 are getting at the point enough with the statements under  
2 18-12-608(C) that we don't need to include the definition  
3 as an economic impact or is it directly linked enough to  
4 the --

5 MR. GILL: Everything refers back to the  
6 definitions. I mean, you know, that's the purpose of the  
7 definitions in the Rule is to clarify, you know, something  
8 in the Rule, so I think it has to be included because it's  
9 referring back to the definition.

10 And I think from looking at this, and I'm trying  
11 to remember back, we've had so many meetings and it's been  
12 a while, as it says here, the definition appears to be  
13 precluding ADEQ from paying for approved activities, so  
14 the language needs to be clarified, and if I remember  
15 right, there was some suggestions made. But I think this  
16 precludes DEQ from getting what it says. I think it needs  
17 to be clarified, because there is obviously something, the  
18 stakeholders did not understand it or did not read it the  
19 way DEQ was reading it, so I think it needs to be  
20 clarified.

21 CHAIRPERSON CLEMENT: Does it rise to the level  
22 of including in this letter from the Policy Commission?

23 MR. GILL: Well, again, if the definition isn't  
24 clear, then I feel the Rule refers back to -- I mean to  
25 these definitions, so to me I think it would have to be.

1           CHAIRPERSON CLEMENT: Is there a motion to  
2 include this statement under economic impact?

3           MR. FINDLEY: So moved.

4           CHAIRPERSON CLEMENT: So moved. Is there a  
5 second?

6           MR. GILL: I will second.

7           CHAIRPERSON CLEMENT: Okay. We have a motion.  
8 We have a second.

9           All in favor?

10          (Chorus of ayes.)

11          CHAIRPERSON CLEMENT: All opposed?

12          (Chorus of ayes.)

13          CHAIRPERSON CLEMENT: So, let's count.

14          One, two, three. Okay. So the ayes have it.

15          There are four ayes, three nays, and Mr. McNeely  
16 abstains. So this will be included.

17          MS. FOSTER: Can I make a comment on that? How  
18 is not getting paid on a pre-approval an economic impact  
19 when that individual owner/operator can go back and get  
20 reimbursed for the additional items?

21          MS. MARTINCIC: I think that's the point. We  
22 can't go back and get reimbursed for the additional items.

23          MS. FOSTER: You have not submitted it  
24 previously, so let's say your work plan says ten wells are  
25 going in the ground, you are out in the field. You say

1 okay, we really need 13.

2 MS. MARTINCIC: If it exceeds it, then the Rule  
3 precludes you from getting it. That's what the problem  
4 identified was.

5 MS. FOSTER: You can still go back under  
6 reimbursement and get the funds is what I'm saying, so to  
7 me it's not an economic impact.

8 MR. GILL: And again, I'm trying to remember  
9 exactly what the issue was. To me, the way it was worded,  
10 I think the concern was that the definition precluded you  
11 from going back even under reimbursement.

12 MS. MARTINCIC: I'm going to make a motion that  
13 we take that definition that we just approved out of the  
14 scope and Standards of Review under Economic Impacts and  
15 list it as Other, so it's still going to the Director in  
16 the letter but it's removed from the Economic Impact  
17 section of the letter.

18 CHAIRPERSON CLEMENT: I will second that motion.

19 All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: All opposed?

22 MR. MC NEELY: Abstain.

23 CHAIRPERSON CLEMENT: And Mr. McNeely abstained.

24 MS. MARTINCIC: So it's just categorized, then.

25 CHAIRPERSON CLEMENT: Yeah. We've agreed

1 unanimously, other than Mr. McNeely, that this will be  
2 included in the letter, it will not be placed under  
3 Economic Impact.

4 MR. FINDLEY: Are there other items that --

5 CHAIRPERSON CLEMENT: We can.

6 MS. MARTINCIC: Now we have a separate category.

7 CHAIRPERSON CLEMENT: Denial of Resubmittals.

8 That is R-18-12-608(E) is the first issue. And this is a  
9 very significant issue to the stakeholders based on our  
10 comments that we received.

11 Any discussions, questions?

12 MS. MARTINCIC: I am going to move that we  
13 actually accept both citations for denials of resubmittals  
14 because I think that those were unanimously in all the  
15 stakeholder meetings a huge issue for all eligible  
16 parties, and essentially save us time by grouping them  
17 here so we do have support for identifying denials.

18 MS. FOSTER: I would second it.

19 CHAIRPERSON CLEMENT: Any comment, discussion on  
20 the amendment at hand?

21 All in favor?

22 (Chorus of ayes.)

23 CHAIRPERSON CLEMENT: All opposed?

24 CHAIRPERSON CLEMENT: Mr. McNeely --

25 MR. MC NEELY: Abstain.

1 CHAIRPERSON CLEMENT: -- abstains. Motion  
2 carries.

3 Next item is Direct Assignment of Benefits. We  
4 only have one issue on that, R-18-12-603(B)(9). Any  
5 discussions or questions about that?

6 Is there a motion to include this?

7 MR. GILL: I move that we include this citation  
8 in any of the letters.

9 MS. MARTINCIC: I will second it. I feel that it  
10 does single out a group within the eligible parties and  
11 treats them differently.

12 CHAIRPERSON CLEMENT: Comments, discussions,  
13 questions? Let's do the vote. All in favor of this  
14 amendment, which is to include direct assignment of  
15 benefits, R-18-12-603(B)(9).

16 MR. GILL: Did we get a second?

17 CHAIRPERSON CLEMENT: Yeah.

18 MR. GILL: Okay.

19 MS. MARTINCIC: You were the second, Hal. All in  
20 favor?

21 (Chorus of ayes.)

22 CHAIRPERSON CLEMENT: All opposed?

23 Anyone abstaining?

24 MR. MC NEELY: Same.

25 CHAIRPERSON CLEMENT: Mr. McNeely abstains. The

1 motion carries.

2 CHAIRPERSON CLEMENT: Inappropriate Seal  
3 Requirements, R-18-12-608(F)(1)(a).

4 Any discussion? We did actually quite a bit of  
5 discussion on this one. Is there any further discussion  
6 or questions regarding this item?

7 I move that we include this item under -- should  
8 we put this under Other or should we put it under Economic  
9 Impacts?

10 MR. SMITH: Other.

11 MR. GILL: Other.

12 CHAIRPERSON CLEMENT: Other.

13 MR. FINDLEY: Can we note that I believe Mr.  
14 McNeely suggested that there might be some way to separate  
15 the information on the form?

16 MS. MARTINCIC: A solution, that there might be a  
17 potential solution.

18 MR. MC NEELY: The form is in Rule; is that  
19 correct, Joe?

20 MR. DROSENDAHL: Uh-huh.

21 MR. MC NEELY: So we're not going to change the  
22 form for that. I would just make the comment, we will  
23 have to look at it with out responsive summary.

24 CHAIRPERSON CLEMENT: So the motion right now is  
25 that we include Inappropriate Seal Requirements,

1 R-18-12-608(F)(1)(a) under Other to be included in the  
2 letter to the Director.

3 I made that motion. Is there a second?

4 MS. MARTINCIC: I will second it.

5 CHAIRPERSON CLEMENT: All in favor?

6 (Chorus of ayes.)

7 CHAIRPERSON CLEMENT: All opposed?

8 Mr. McNeely, will you abstain?

9 MR. MC NEELY: Abstain.

10 CHAIRPERSON CLEMENT: Abstains. The motion  
11 carries.

12 The next issue is Confidentiality,  
13 R-18-12-609(A).

14 MS. MARTINCIC: I will move that the  
15 confidentiality in 12-609(A) be included under Other as  
16 well in the letter to the Director.

17 CHAIRPERSON CLEMENT: Any comments, discussions,  
18 questions?

19 Is there a second on that issue?

20 MR. GILL: Second.

21 CHAIRPERSON CLEMENT: Okay. All in favor?

22 (Chorus of ayes.)

23 CHAIRPERSON CLEMENT: All opposed? No?

24 One Abstinance. Okay. Or one person abstains.

25 MS. MARTINCIC: Is there is an abstention?

1           CHAIRPERSON CLEMENT: I'm sure there is, but I  
2 don't have it in my mind.

3           The motion carries. We will include  
4 Confidentiality, R-18-12-609(A), in the letter to the  
5 Director under Other.

6           Co-Pay Credit, R-18-12-609(D).

7           MS. MARTINCIC: I move that we accept this. I  
8 think this is a big issue for owner/operators, and I move  
9 that it remain under the Economic Impact category,  
10 18-12-609(D).

11          CHAIRPERSON CLEMENT: Is there a second?

12          MR. GILL: I will second.

13          CHAIRPERSON CLEMENT: Any further discussion,  
14 questions, anything on that?

15          Okay. Let's vote. All in favor?

16          (Chorus of ayes.)

17          CHAIRPERSON CLEMENT: All opposed?

18          One.

19          MR. MC NEELY: Abstain.

20          CHAIRPERSON CLEMENT: One. Mr. McNeely abstains.

21          So we have now approved Co-Pay Credits under  
22 R-18-12-609(D) will be included under Economic Impacts.

23          Scoring and Ranking Issues.

24          MS. MARTINCIC: I'm going to move that we accept  
25 all three of these citations under Scoring and Ranking,

1 because I feel they're important enough, given the climate  
2 of potential ranking in the future of the program with  
3 phase-out impending, and that they remain under the  
4 Economic Impact category.

5 CHAIRPERSON CLEMENT: Are there discussions,  
6 comments, questions on that amendment?

7 Is there a second?

8 MR. GILL: I will second.

9 CHAIRPERSON CLEMENT: Okay. Let's vote.

10 All in favor?

11 (Chorus of ayes.)

12 CHAIRPERSON CLEMENT: All opposed?

13 MS. GAYLORD: No.

14 CHAIRPERSON CLEMENT: Anyone abstaining?

15 MR. MC NEELY: Aye.

16 CHAIRPERSON CLEMENT: Mr. McNeely abstains. The  
17 motion carries.

18 The Scoring and Ranking Issues, R-18-12-612(C),  
19 R-18-12-612(D), R-18-12-614(B)(4) will be included in the  
20 letter to the Director under Economic Impacts.

21 Okay. We're now on to the next agenda item or  
22 next item in the letter, Certification Language,  
23 R-18-12-603(B)(8), and I think we've had quite a bit of  
24 discussion on this, and I think there was agreement that  
25 this should go under Other, and actually my editorial

1 problem in the letter, it was included as an Other agenda  
2 item in the three-page stakeholders' list.

3 So, is there a motion?

4 MS. MARTINCIC: I will move that we accept  
5 18-12-603-(B)(8), Certification Language under Other in  
6 the letter going to the Director.

7 CHAIRPERSON CLEMENT: Is there a second?

8 MS. GAYLORD: Second.

9 CHAIRPERSON CLEMENT: All in favor?

10 (Chorus of ayes.)

11 CHAIRPERSON CLEMENT: Anyone opposed? Anyone  
12 abstaining?

13 Mr. McNeely abstains. The motion carried.  
14 Certification Language R-18-12-603(B)(8) will be included  
15 as Other. Okay.

16 Now let's jump back to the -- we've gone through  
17 each agenda item or each sub item. Let's go back to the  
18 actual paragraph and how we define this for the Director.

19 It states here, "The proposed Rule will result in  
20 substantial economic impacts on owners and operators and  
21 eligible parties."

22 Let's take that first sentence. We've had  
23 previous comment on "will" versus "may" on that section.

24 MS. MARTINCIC: Can we clarify which issues still  
25 remain under Economic Impact? Since we did move some of

1 the questionable ones to a new category defined as Other,  
2 it might help folks understand whether we should say  
3 "will" or "may".

4 CHAIRPERSON CLEMENT: The way that I have it, and  
5 please correct me if I make a mistake here, the first SAF  
6 eligibility item, I believe we went to Other with that.

7 MS. MARTINCIC: No. The first Other that I have  
8 is Scope and Standards of Review, the definition.

9 CHAIRPERSON CLEMENT: Sorry.

10 MR. FINDLEY: We pulled the definitions from the  
11 Scope and Standards of Review.

12 MS. MARTINCIC: Do you want me to read them?

13 CHAIRPERSON CLEMENT: Sure.

14 MS. MARTINCIC: So right now the letter would  
15 read, Economic Impacts. These would be the sub items.  
16 SAF Eligibility, Scope and Standards of Review, Denial of  
17 Resubmittals, Direct Assignment Benefit, Direct Assignment  
18 of Benefits, Co-Pay Credits, Scoring and Ranking issues.

19 So, six items that would be considered Economic  
20 Impacts.

21 MS. FOSTER: So Scope and Standards of Review?  
22 There is one item there that we voted on.

23 MS. MARTINCIC: Yes, I'm sorry, yes, the  
24 definition was added. Sorry.

25 CHAIRPERSON CLEMENT: Okay. That's clear to

1 everybody.

2           Okay. Let's jump back to the first sentence.

3           We had "will" and "may" under discussion. I  
4 don't have a strong opinion personally either way. I do  
5 think some of these are going to have -- pretty clearly  
6 going to have economic impacts on folks.

7           Ms. Foster.

8           MS. FOSTER: May I suggest that we include the  
9 comment "will or may". That would be a win-win situation  
10 for all parties.

11           CHAIRPERSON CLEMENT: Okay. So, is that --

12           MS. MARTINCIC: See if we can get them to vote  
13 yes on that.

14           MR. MC NEELY: Can I clarify one? I want to  
15 clarify what I was saying. This letter is to the  
16 Director. I represent the Director. The Director's going  
17 to respond. I don't really want to vote yes or no. We  
18 will be responding to this letter.

19           CHAIRPERSON CLEMENT: We understand, Mr. McNeely.  
20 We don't think that you're abstaining because you're not a  
21 participant.

22           MR. MC NEELY: Okay.

23           CHAIRPERSON CLEMENT: So, we have, I believe, a  
24 motion; is that correct?

25           MS. FOSTER: Correct.

1           CHAIRPERSON CLEMENT: To alter the first sentence  
2 to insert "or may" between the words "will" and "result".

3           Is there a second?

4           MR. SMITH: I will second it.

5           CHAIRPERSON CLEMENT: All in favor?

6           (Chorus of ayes.)

7           CHAIRPERSON CLEMENT: Anyone opposed?

8           Mr. McNeely is abstaining.

9           MR. MC NEELY: Yes.

10          CHAIRPERSON CLEMENT: So the motion carries.

11          Okay. Let's jump to the second sentence.

12          "In addition, the proposed Rule changes will push  
13 more eligible parties into the appeals process, which will  
14 increase costs for both the state and the regulated  
15 community, while delaying site clean-up.

16          MS. MARTINCIC: I will make a motion that we  
17 maybe clarify that the identified economic impact will  
18 push, so that it's a little more specific and not just the  
19 whole general Rule that might clarify a little bit.  
20 That's just an idea.

21          CHAIRPERSON CLEMENT: Any further discussion on  
22 that, or ideas? Ms. Foster.

23          MS. FOSTER: I still like the "will or may". Can  
24 we change both of those "wills" to "will or may"?

25          CHAIRPERSON CLEMENT: So it would read now, based

1 on the suggestions we have on the table, "In addition, the  
2 identified economic impacts" --

3 Did you want the proposed Rule, identified  
4 proposed Rule, the identified economic impacts, or did you  
5 want just identified economic impacts?

6 MS. MARTINCIC: We could say identified economic  
7 impacts by, you know, identified economic impacts by the  
8 Policy Commission. That's what I was getting to the point  
9 of, that these -- I think these will lead to more appeals.

10 CHAIRPERSON CLEMENT: But I just want to get the  
11 language correct. The wording is, "In addition, the  
12 identified", because we've identified these as we've  
13 already voted on, right, so I don't think we have to  
14 restate the Policy Commission does.

15 "In addition, the identified economic impacts,"  
16 and then Ms. Foster has suggested we add "will or may"  
17 push more eligible parties into the appeals process which  
18 will or may increase costs for both the state and the  
19 regulated community while delaying site cleanup."

20 Any other changes, suggestions?

21 MR. FINDLAY: I think in that second "will", you  
22 should change "will" to "would", which, given the above  
23 that would, so you eliminate the "will and may".

24 MS. MARTINCIC: I would agree with that.

25 CHAIRPERSON CLEMENT: So, any other discussions

1 on that, any other changes that we're proposing?

2 Can I read it again?

3 MS. MARTINCIC: Yes, please.

4 CHAIRPERSON CLEMENT: "In addition, the  
5 identified impacts will or may push more eligible parties  
6 into the appeals process, which would increase costs for  
7 both the state and the regulated community while delaying  
8 site clean-up." Okay.

9 MS. MARTINCIC: Is it identified economic impact?

10 MR. GILL: Just economic.

11 MS. MARTINCIC: You left out "economic".

12 CHAIRPERSON CLEMENT: Oh, I'm sorry, it is only  
13 because I'm exhausted.

14 I will, once again -- I apologize to everyone.

15 "In addition, the identified economic impacts  
16 will or may push more eligible parties into the appeals  
17 process, which would increase costs for both the state and  
18 the regulated community while delaying site clean-up."

19 That's the verbiage.

20 MS. MARTINCIC: I will make a statement that our  
21 Chairman just provided the Commission the adopted and  
22 added to the letter to the Director.

23 MS. FOSTER: I second it.

24 CHAIRPERSON CLEMENT: All in favor?

25 (Chorus of ayes.)

1           CHAIRPERSON CLEMENT:  Anyone opposed?  Anyone  
2 abstaining?

3           MR. MC NEELY:  Abstain.

4           CHAIRPERSON CLEMENT:  Mr. McNeely abstains.

5           The motion carries.  The sentence has been  
6 changed to read, "In addition, the identified economic  
7 impacts will or may push more eligible parties into the  
8 appeals process which would increase costs for both the  
9 state and the regulated community while delaying site  
10 clean-up."

11           Okay.  The next sentence, which I don't think we  
12 really have to vote on because this is just a lead-in  
13 sentence.  Does anybody have any comments or concerns or  
14 want to change that sentence or feel a need to vote on the  
15 lead-in sentence to the following section?  Okay.

16           Now, the only other thing we have to go into, I  
17 think, is the last paragraph.

18           MS. MARTINCIC:  Do we need to create language  
19 into the other categories?

20           MR. FINDLEY:  We need a new lead-in paragraph.

21           CHAIRPERSON CLEMENT:  Okay.  So there will be, in  
22 terms of format, there will be a third section with a  
23 bullet, capital, bold, other, dash, underline.

24           MR. FINDLEY:  Other impacts.

25           CHAIRPERSON CLEMENT:  Other impacts.  Thank you.

1 MS. MARTINCIC: I will make a motion that we have  
2 it just say, "The below issues were identified as --  
3 identified by the stakeholders as other concerns.

4 CHAIRPERSON CLEMENT: The issues identified --  
5 the issues listed below were identified -- were identified  
6 by --

7 MS. MARTINCIC: The stakeholders.

8 CHAIRPERSON CLEMENT: Do we want to say by  
9 stakeholders?

10 MS. MARTINCIC: Or by the Commission.

11 CHAIRPERSON CLEMENT: This is our stuff, which  
12 we've identified. We don't have to say "by Commission"  
13 because it's our letter; right?

14 "Were identified as additional concerns"?

15 MS. MARTINCIC: With the proposed rule.

16 CHAIRPERSON CLEMENT: "As additional concerns of  
17 proposed Rule."

18 I will read that again. It will read in caps,  
19 bold, underlined, other impacts dash, then regular script  
20 issues.

21 "The issues listed below were identified as  
22 additional concerns with the proposed Rule."

23 Okay. Did we need to -- let's just vote on it.  
24 Is there a motion to approve that language?

25 MR. SMITH: I move that we approve the language.

1 MS. FOSTER: I second it.

2 CHAIRPERSON CLEMENT: All in favor?

3 (Chorus of ayes.)

4 CHAIRPERSON CLEMENT: Anyone opposed? Anyone  
5 abstaining?

6 MR. MC NEELY: I abstain.

7 CHAIRPERSON CLEMENT: Mr. McNeely abstains. The  
8 language is approved as identified. Okay.

9 Now, the last paragraph is substantive. The  
10 first sentence -- and we debated this, frankly, amongst  
11 the subcommittee chairs and myself about what are we  
12 really telling the Director. Are we saying don't pass  
13 this Rule? Do we want these changes made before it goes  
14 to GRRRC? I mean, we debated and, you know, we list these  
15 issues but we haven't asked him to do anything, basically.

16 And so I think this is a pretty important  
17 sentence, and I think we need to really talk this through  
18 on what we want the message to be to the Director  
19 regarding these issues besides the fact that we think they  
20 need to be corrected.

21 MS. MARTINCIC: Well, I think by saying that we  
22 want to see these issues addressed and corrected before it  
23 moves to GRRRC continues to show that the Commission is in  
24 good faith interested in working with the agency on this.  
25 We identified the issues. We did the same thing back in

1 January 2005, and that's the next step in the process is  
2 for it to move to GRRC. I think it shows a good faith  
3 effort more so than just saying that the Rule should go  
4 away, even though that is what my personal opinion is.  
5 So, I will just leave that in my comments.

6 CHAIRPERSON CLEMENT: Mr. McNeely?

7 MR. MC NEELY: Just in general, you know, if  
8 that's a good faith effort you are trying to put in here,  
9 one thing that this whole letter misses out on is we  
10 started this last August and we were going to try to push  
11 this Rule through, and you said we needed more time. So  
12 we've had different revisions, two different comment  
13 periods, and even though the Rule -- I mean, this letter  
14 implies that we didn't make any changes, but we made  
15 significant changes, not all of them, but we did look at  
16 them.

17 So, I'm just saying, before we approve this whole  
18 letter, I think if you really want to make it look like  
19 we're trying to work with the agency, we get a lot in  
20 terms of, we pushed this thing about another six, eight  
21 months down the road, two revisions, two sets of comments,  
22 and there is nothing in here that makes it sound like  
23 we've had any communication at all concerning the first  
24 draft, the second draft, and this final draft, which is a  
25 lot of revisions.

1           MS. MARTINCIC: I just have to say, as a  
2 regulated member of the regulated community and  
3 representative of tank owners, August 12th is the first  
4 time that I saw this Rule and any, you know, alleged  
5 changes that the agency made, and in the course of  
6 spending, you know, countless hours in these meetings and  
7 reviewing the Rule, while the agency feels the changes  
8 were made, I think it's rather clear through our list of  
9 issues that the issues have not been addressed.

10           So, you know, I think changing some of the words  
11 from "and" to "or" or little changes that were made here  
12 or there and identified during this process, I think that  
13 it's clear that the regulated community as a whole, you  
14 know, representing all eligible parties, still have these  
15 same issues. They're pretty much -- if you go back and  
16 look at our comments in January 2005 that the Commission  
17 sent to the Director, a lot of them are the same issues.

18           So, you know, I don't know how much time that the  
19 agency has to incorporate some of these changes, but I  
20 think as a Commission we can say in good faith that, you  
21 know, we don't think it should proceed to GRRRC this way.

22           MR. MC NEELY: Just to clarify --

23           CHAIRPERSON CLEMENT: Mr. McNeely.

24           MR. MC NEELY: -- you said August 12th is the  
25 first time you saw this set of rules, but there were draft

1 rules October 1st.

2 MS. MARTINCIC: This version of it, I mean. It  
3 wasn't pre-released.

4 MR. MC NEELY: We had a draft in October 1st. We  
5 made significant changes. On November 15th, I think was  
6 our second one. We made significant changes to that which  
7 resulted in this Rule, so we have changed it. We don't  
8 ever agree with all the comments, but we made significant  
9 changes. I think that should be reflected that we had a  
10 process. It's been ongoing for 13 months now.

11 MS. MARTINCIC: I think that it needs to be  
12 clarified that the last version that the regulated  
13 community saw occurred on November of 2004 to this one,  
14 which was August 2005. That's a whole year that we didn't  
15 see any work, any, you know, meetings on it. So, you  
16 know, I feel pretty strongly that it's been kind of kept  
17 in sequester somewhere.

18 CHAIRPERSON CLEMENT: Well, there is a process  
19 they have to go through, and I hear what Mr. McNeely is  
20 saying and I certainly would be willing to insert a  
21 sentence in here expressing appreciation for the level of  
22 effort that occurred previously. And obviously the  
23 subject matter of this still is that we have a Commission  
24 full of significant problems.

25 But I don't have any -- I do think this

1 department has worked very constructively in this program  
2 with the Commission, and I appreciate that level of effort  
3 that we are seeing out of the department right now, and I  
4 do not want to not recognize that, frankly, personally,  
5 and I don't think most of the Commission members would  
6 feel that way.

7           So, I don't have any problem drafting a sentence  
8 saying that we appreciate the previous efforts, however,  
9 we still have concerns, basically.

10           So, I have, "While the Commission appreciates the  
11 ADEQ efforts to address previous stakeholders' comments  
12 during the informal Rule development process, the  
13 Commission continues to have outstanding concerns," or  
14 something like that. And we can vote on this sentence,  
15 and we may want to put it in the lead paragraph.

16           Why don't we -- my suggestion, and I will read  
17 this again, "While the Commission appreciates the ADEQ  
18 efforts to address previous stakeholders' comments during  
19 the informal Rule development process, the Commission  
20 continues to have outstanding concerns."

21           And is there any change to that language that you  
22 would suggest? I would suggest we insert that in the lead  
23 paragraph.

24           MR. GILL: Before the last sentence.

25           MS. MARTINCIC: At the bottom.

1           CHAIRPERSON CLEMENT: Do you think in the bottom?  
2 You guys tell me because I'm getting kind of brain dead  
3 here. Does anybody have a preference?

4           MR. GILL: I think it goes real well right before  
5 the very last sentence in the top paragraph.

6           MS. MARTINCIC: I agree.

7           CHAIRPERSON CLEMENT: In the top paragraph?

8           MS. MARTINCIC: Oh, in the top. I think it  
9 should be right before we recommend that it not proceed to  
10 GRRC without the changes made.

11          MR. SMITH: I think it needs to be a lead-off  
12 statement. Still it said the department has worked very  
13 hard over the last 13 months.

14          MS. MARTINCIC: So where are we talking about  
15 inserting it?

16          CHAIRPERSON CLEMENT: It would be in the first  
17 paragraph before "in general".

18          MS. MARTINCIC: After 2005?

19          MR. FINDLEY: Uh-huh.

20          CHAIRPERSON CLEMENT: And it would be say, "While  
21 the Commission appreciates ADEQ's efforts to address  
22 previous" -- and I've got to look and see if ADEQ -- I may  
23 have to say Arizona Department of Environmental Quality.  
24 Nobody is going to hold me to that kind of stuff; right?  
25 Because I don't think we have an abbreviation in there

1 yet.

2 "While the Commission appreciates the Arizona  
3 Department of Environmental Quality efforts to address  
4 previous stakeholders' comments during the informal Rule  
5 development process, the Commission continues to have  
6 outstanding concerns."

7 MS. FOSTER: I second it.

8 CHAIRPERSON CLEMENT: Any further discussion or  
9 questions or comments?

10 All in favor?

11 (Chorus of ayes.)

12 CHAIRPERSON CLEMENT: Anyone opposed? Anyone  
13 abstain?

14 MR. MC NEELY: Abstain.

15 CHAIRPERSON CLEMENT: Mr. McNeely abstains. The  
16 motion carries.

17 Okay. Now we're back to what is really an  
18 important last sentence, or second -- the first sentence  
19 in the last paragraph, is this what we want to recommend  
20 that until these significant issues are resolved, whether  
21 they're resolved in the stakeholders' favor or the agency  
22 decides not to, that the Rule should not proceed to GRRC.  
23 We've got to have an open discussion on this point.

24 MS. MARTINCIC: That's the next process. I don't  
25 know what else you would put in there.

1 MR. SMITH: Or you could put in there that, you  
2 know, we can support these changes or we can support the  
3 Rule with these changes.

4 CHAIRPERSON CLEMENT: That would be the other way  
5 to state that.

6 MR. SMITH: Other than recommending not going to  
7 GRRRC.

8 MS. MARTINCIC: I don't know that I can in good  
9 faith vote.

10 MR. SMITH: You can support the rules with these  
11 changes, I think that's what we are saying, the Commission  
12 will support the rules.

13 MS. MARTINCIC: How is it changed? I'm not going  
14 to say that I'm going to support it until I see what the  
15 change the agency puts in there is. So I don't feel  
16 comfortable with that language. I think we ought to just  
17 say that the issues need to be addressed by the agency as  
18 the board moves forward in the process.

19 CHAIRPERSON CLEMENT: Ms. Gaylord, do you have a  
20 comment?

21 MS. GAYLORD: No.

22 CHAIRPERSON CLEMENT: I mean, I can see  
23 supporting language to Mr. Smith's point satisfactorily  
24 addresses these changes. I mean, you know -- that way --  
25 I mean, I hear what you are saying also, Ms. Martincic,

1 but, you know, we can craft language that will do that or  
2 we can craft language that says we don't want it to go  
3 forward to GRRC. This is a real choice that we have as a  
4 Commission. And I think we need to decide, if we can as a  
5 Commission, which way we want to move this. And I am open  
6 to discussion.

7 MS. MARTINCIC: I guess that brings up the point  
8 we are going to say we are going to support the Rule if  
9 the changes are made, so that then means that you go to  
10 GRRC and you testify in behalf of the Commission you  
11 support these rules even though particular Commission  
12 members could potentially still not be in favor of the  
13 Rule.

14 I think it opens up a Pandora's box of problems.  
15 That's why I think you're better off to say that we think  
16 the issues need to be addressed before it continues on in  
17 the process.

18 CHAIRPERSON CLEMENT: Mr. Findley, do you have an  
19 opinion on this?

20 MR. FINDLEY: I think I agree, that if you ask  
21 for these issues to be addressed, and then it's on -- the  
22 DEQ must then decide what they are going to do. I don't  
23 think you want to commit yourself to approving something  
24 that you haven't seen.

25 CHAIRPERSON CLEMENT: Ms. Foster, do you have an

1 opinion on this?

2 MS. FOSTER: I think we call for the vote.

3 CHAIRPERSON CLEMENT: Okay. Let's vote on the  
4 language as drafted.

5 The first sentence reads of the last paragraph:  
6 "The Policy Commission recommends that the proposed SAF  
7 Rule not proceed to the Governor's Regulatory Review  
8 Council (GRRC), until these significant issues have been  
9 resolved." Is there a motion?

10 MS. MARTINCIC: I move that we accept the  
11 language.

12 CHAIRPERSON CLEMENT: Is there a second on that?

13 MR. FINDLEY: Second.

14 CHAIRPERSON CLEMENT: Okay. Any further  
15 discussion, questions, comments?

16 All in favor?

17 (Chorus of ayes.)

18 CHAIRPERSON CLEMENT: All opposed?

19 Anyone abstaining?

20 MR. MC NEELY: Abstain.

21 CHAIRPERSON CLEMENT: Abstain. Okay.

22 The motion carries. The language as drafted will  
23 be submitted to the Director. I think that's -- any other  
24 items in this? I mean, thank you and call me if we don't  
25 need to vote on it, I don't think. And of course I do

1 make up the letterhead. We have no letterhead.

2 Is there anything else that as a Commission we  
3 need to cover relative to this today?

4 MS. MARTINCIC: I would just encourage all  
5 Commission members to consider submitting their own  
6 written comments if there are additional issues that you  
7 have, or additional issues that the groups you are here  
8 representing have, and a reminder that the comments are  
9 due by this Friday, September 30th at 5 o'clock.

10 CHAIRPERSON CLEMENT: I suggest we take a break.  
11 I know we are going to lose Ms. Gaylord, and can  
12 hopefully finish the rest of the agenda. We still have  
13 six in person and one on the phone, so we still have  
14 enough to continue.

15 Thank very much.

16 (A recess was taken at 11:04 a.m.; resumed at  
17 11:11 a.m.)

18 CHAIRPERSON CLEMENT: I frankly have not read the  
19 August 2005 meeting minutes, so I would just as soon that  
20 we move on and pass that next time, because I haven't even  
21 read them.

22 MR. GILL: Agreed.

23 CHAIRPERSON CLEMENT: Discussion of rules  
24 affecting the UST program. Mr. McNeely's going to give us  
25 a very quick summary.

1           MR. MC NEELY: Very quick. The Soil Remediation  
2 Levels Rule, we are having our first public meeting  
3 October 4th here in Phoenix from ten to twelve in Room  
4 250, and we will pass out revised language. We will pass  
5 out the new tables that show the predetermined levels, we  
6 will pass out formulas and assumptions, how we came up  
7 with those. They're very consistent with EPA and PRGs.

8           MS. MARTINCIC: So the tables won't be available  
9 until the meeting?

10          MR. MC NEELY: Right.

11          A VOICE: October?

12          MR. MC NEELY: 4th.

13          A VOICE: At what time?

14          MR. MC NEELY: Ten to twelve at DEQ in Room 250.

15          We have another meeting October 5th down in  
16 Tucson in the Southern Regional Office, and that's from  
17 one to three on Wednesday, October 5th. It will be  
18 exactly the same meeting as we have here just for the  
19 people in the south.

20          CHAIRPERSON CLEMENT: And, Mr. McNeely, is it  
21 fair to say that you've made significant changes to the  
22 first drafts of those Rules?

23          MR. MC NEELY: Well, these are the first.

24          CHAIRPERSON CLEMENT: Informal drafts of the  
25 Rules?

1           MR. MC NEELY: Right. Yes. And this is our  
2 first public meeting. We will see how it goes and ask for  
3 any comments, and I'm not sure if we're going to have  
4 other meetings. It depends on if there is a lot of  
5 interest to have additional meetings or not, so we really  
6 -- this is the informal process.

7           MS. MARTINCIC: Informal process. That's the way  
8 to identify it.

9           MR. MC NEELY: The formal process won't start  
10 until we feel like we have a consensus Rule out there, so  
11 then we'll -- I'm hoping January time frame that we  
12 actually will start the formal process.

13          MS. MARTINCIC: Would the agency be willing,  
14 since the meeting will take place in the beginning of  
15 October, to report again at our next Policy Commission  
16 meeting on how the meetings went?

17          MR. MC NEELY: Yes. Absolutely.

18          MS. MARTINCIC: That would be greet.

19          CHAIRPERSON CLEMENT: Are there any specific  
20 aspects of the SRL, Soil Remediation Rules, that will be  
21 important to the UST program?

22          MR. MC NEELY: Some of the petroleum constituents  
23 are coming down, some of the levels, the way we develop --  
24 we use new tox numbers, toxicity numbers, but in general  
25 Benzene is pretty much the same. Some of the other

1 xylenes come down because we're determining saturation, so  
2 if you -- saturation is a level we're using, the number is  
3 not an at-risk number. So, I've looked at it. It doesn't  
4 seem to impact the UST program significantly at all. The  
5 most significant should be the some of the solid TCE and  
6 PCE.

7 MR. GILL: Gail.

8 CHAIRPERSON CLEMENT: Yes, Mr. Gill.

9 MR. GILL: Again, the only thing that I would  
10 comment on, and it is -- well, I guess, depending on how  
11 you look at it whether it's a huge impact or not, but the  
12 TPH is being -- what we call hydrocarbons, is out, the  
13 last time I saw it, it was taken out, and the individual  
14 constituents that the EPA (inaudible) Benzenes and  
15 Napthalenes and things like that, and I will now have  
16 individual numbers for them.

17 CHAIRPERSON CLEMENT: Correct.

18 MR. MC NEELY: Right. And that's correct. With  
19 the TPH, we really don't have a good toxicity number, and  
20 that's the way we've been running our program for the last  
21 seven years. We look at the individual constituents. You  
22 sample for the whole VOC, PAHs, and all of those are below  
23 a level, and we close the site. So the TPH is more of an  
24 indicator, and we are just taking it out of the Rule. We  
25 can still use it as an indicator, but we are taking it out

1 as a tox number.

2 MR. GILL: I think it's a good move. I guess my  
3 only concern is that now we really have to look at  
4 individual sites as to with whether or not we need to go  
5 back and collect more data for risk assessments and  
6 further classification composition needs to be done.

7 CHAIRPERSON CLEMENT: Okay.

8 MR. MC NEELY: Okay. I will move on to the  
9 Hazardous Air Pollutants Rule, and that is a rule being  
10 worked on by our air department or air division. They  
11 have a web site, and I don't know if I want to read it  
12 off, but it's on the web site for the air quality  
13 division. They are having public meetings. They've  
14 already had -- their fourth stakeholders' meeting was  
15 September 14th. Today, their fifth stakeholder meeting is  
16 going on right now. That's why nobody from the air could  
17 come to give a presentation.

18 But October 12th, the strawman rule is supposed  
19 to be posted. October 26th is another stakeholder  
20 meeting. And on November 9th is apparently the seventh  
21 stakeholder meeting with responsive summary.

22 So they have a pretty tight schedule. They are  
23 trying to push this rule through, and one thing about --  
24 currently the way it would impact the UST program is, the  
25 STE systems were put into the attached rule. Currently

1 they're not considered a source in this rule. So, talked  
2 to Nancy, she doesn't think this has an impact on the UST  
3 program.

4 We have asked them to look at the sources that  
5 are included in the rule, which if they take a new look at  
6 that, STE could be put in, but currently right now it's  
7 not. I will try to get more involved with this and see if  
8 it impacts UST.

9 CHAIRPERSON CLEMENT: Thank you.

10 MR. MC NEELY: But I would go to their web site.

11 MS. MARTINCIC: You know, as of earlier this  
12 week, the last meeting was not posted on the one site, so  
13 you might encourage her to get it up faster, because a lot  
14 of these meetings, like you said, coincide with our  
15 meetings or other -- I mean agency meetings. Since the  
16 agency is so proactive in rulemaking right now, it's  
17 difficult to be in so many places.

18 But I appreciate the agency putting the minutes  
19 from the meeting and usually the minutes are quite  
20 extensive, so if you do miss a meeting, I would encourage  
21 folks, if you are able to go on line and look at the  
22 minutes, because the company they've contracted to do that  
23 work does a good job of providing detailed comment.

24 MR. FINDLEY: The 26th is the date of our next  
25 meeting?

1 MS. MARTINCIC: Right. They are all scheduled  
2 right back to back.

3 MR. MC NEELY: These meetings are not like ours,  
4 the October 26th meeting is from 9:00 a.m. to 4:00 p.m.

5 MS. MARTINCIC: They're all-day meetings. I've  
6 been to a couple of them.

7 MR. MC NEELY: And that's in the ASU Downtown  
8 Center, so you can still spend three hours here and then  
9 go spend four hours there.

10 CHAIRPERSON CLEMENT: If you think our meetings  
11 are long and tedious, just go to one of those.

12 MS. MARTINCIC: I don't know, I guess we're not  
13 supposed to have jobs.

14 MR. MC NEELY: So that's it for the Rule update.

15 CHAIRPERSON CLEMENT: Thank you very much, Phil.

16 Okay. Let's jump to the Arizona Department of  
17 Environmental Quality Updates, and it's now back to Mr.  
18 McNeely, UST program update.

19 MR. MC NEELY: UST program update, I will just --  
20 really just the rules we're working on, and I have nothing  
21 to add in terms of the program.

22 I will jump down to the SAF update, because Tara  
23 Rosie is not here. I did pass out the graphs that we had.  
24 Just to go through it very quickly, we reviewed 53  
25 applications in August and received 63, so we fell behind

1 by 10.

2           Our total number of active applications are 370.  
3 39 pending over 180 days. We're trying to work to get  
4 those out this month. 139 more than 90 days, and 192 less  
5 than 90 days. But we've been fairly steady. It's been in  
6 the 400 range for a couple of months.

7           One thing we have been doing is we have the new  
8 data and it's slowed us down because we are still trying  
9 to make it -- it's very complex data and has a lot of  
10 calculations and prints letters and we're having some  
11 issues to get it to actually work accurately, so we have  
12 some growing pains this month and hopefully it will be  
13 fixed by next month.

14           CHAIRPERSON CLEMENT: Mr. McNeely, I know that  
15 you are short-staffed. Are you now going to be fully  
16 staffed in SAF or are you still struggling with that?

17           MR. MC NEELY: Tara Rosie got promoted to a  
18 section manager position. We have not replaced her yet,  
19 so we are still missing a unit manager, a Hydro 4 type  
20 position, a senior technical person. We are still short a  
21 Hydrologist III in that unit to do claims review. And  
22 Joe's group, we're short an enforcement unit manager. And  
23 we are still trying to hire a Hydro III. We just had one  
24 that moved to New York, so it's a continuous process  
25 trying to hire people, but we're doing okay in terms of

1 the work load. As you can see, the numbers are fairly  
2 steady concerning a lot of the resources we put into the  
3 new database and the Rule.

4 Let me see if there is anything else. If you  
5 want to turn the page to the appeals, and these are all we  
6 say approximate on here because our database is not real  
7 good right now. We're trying to do this by hand.

8 We had 48 informal appeal requests in August. We  
9 reviewed 30 so that we fell behind 18 in August.

10 338 formal appeal requests, and we talked about  
11 that last month, and we had 7 formal appeal  
12 determinations.

13 And that 338, we do have -- a lot of those are  
14 consolidated, we have a status conference with OAH on  
15 October 12th.

16 CHAIRPERSON CLEMENT: Those 338 appeals really  
17 have the same -- most of them have the same subject matter  
18 and they are going to be lumped; is that what you are  
19 implying or not?

20 MR. MC NEELY: Most of them are eligibility  
21 issues with the same applicants, so we're going to try to  
22 work that out.

23 CHAIRPERSON CLEMENT: So probably if you could  
24 work one out, the rest of them may be able to be worked  
25 out?

1 MR. MC NEELY: Not exactly.

2 CHAIRPERSON CLEMENT: I don't need to know  
3 anymore. I'm just trying to get a sense of the work load.

4 MR. MC NEELY: That's all I have for SAF.

5 MR. GILL: Gail, I have a question.

6 CHAIRPERSON CLEMENT: Yes, Mr. Gill.

7 MR. GILL: Phil, I think you've already answered  
8 this question, but I want to just run it by. I received a  
9 number of e-mails from both small and very large  
10 consulting firms complaining about the time frame for  
11 their letters of determinations, anywhere from three and a  
12 half to four months, and payments the same time frame.  
13 And are you saying that the problem is primarily the  
14 database?

15 MR. MC NEELY: Yes. Unfortunately, that's true.  
16 What we've done is we've been continuing on trying to  
17 process these applications, so we haven't had the database  
18 to actually punch it in and print out what we need and  
19 documents to get an invoice or a PO to pay. We've been  
20 doing that by hand over the last week and a half, so that  
21 should be solved. I know we have about 70 something that  
22 we are trying to get out the door this week. Hopefully  
23 that's all. The database is very, very complex.

24 MS. MARTINCIC: Can you share that with us,  
25 what's the problem? Is it completely purely technical?

1 The agency got half a million dollars to create this new  
2 database and everyone supported that measure believing  
3 that it was going to make things better.

4 MR. MC NEELY: It will.

5 MS. MARTINCIC: And it seems like it's made  
6 things worse.

7 MR. MC NEELY: Short-term. Our old database was  
8 a Foxpro database, which is probably 1980 language. We  
9 converted to Oracle Base, which will be good because  
10 eventually we will start doing like online applications,  
11 put everything on the web, things like that with the  
12 current data we have. But we migrated all the data over  
13 from the old database to the new database. Whenever you  
14 do, things drop off, things don't add up, and we have  
15 formulas when we approve stuff, the computer tracks what  
16 you approve, what you deny, co-payment, it tracks all  
17 that.

18 For some reason the calculation is wrong on all  
19 that stuff, so everytime we try to print out a letter, the  
20 calculations are messed up, and this is way over my head.  
21 We go to the programmers, they fix it, they say we fixed  
22 it. We test it, it works for the first one, the second  
23 one doesn't work again. As it remigrates back and forth,  
24 it's way over my head in terms of language. I'm not sure  
25 what the problem is. I think they said they fixed it now,

1 but it's a huge -- we had millions, we had a decade of  
2 information in the old language, so it's a big task to do  
3 that.

4 MS. MARTINCIC: And the agency has safeguards to  
5 make sure that, you know, the information -- I mean, it's  
6 not lost; right?

7 MR. MC NEELY: No, no. It's still in the old  
8 database. We put it through this holding area, then we  
9 test it, it works, we put it through the new database, it  
10 doesn't work, we go back to the holding area. It's  
11 complex, but it will be much, much better down the road,  
12 just short-term growing pains.

13 MS. MARTINCIC: Okay.

14 CHAIRPERSON CLEMENT: I commend you, I mean,  
15 trying to put all that information in a new database while  
16 you are doing program development, trying to get these  
17 things out and you are short-staffed. I mean, you guys  
18 have been doing a lot of work and a lot of good work, so  
19 thank you.

20 Mr. Drosendahl, I think you are up next.

21 MR. DROSENDAHL: Yeah. I'm Joe Drosendahl, the  
22 manager of the Corrective Action section. I've handed out  
23 the current work load for the Corrective Action section,  
24 and also our productivity over the last month.

25 Right now we have approximately 44 submitted

1 documents that we're in the process of reviewing. What  
2 isn't reflected here is the results of the department's  
3 LUST case closure project where we've gotten money from  
4 the EPA to have contractors help us go through some of the  
5 low priority sites, and since the beginning of the year  
6 they've gone through 800 LUST sites, which has resulted in  
7 approximately 300 closures, so that is very successful.

8           And we hope to continue but pretty soon we're  
9 going to run out of low priority sites.

10           MS. MARTINCIC: How does that work? Region 9 is  
11 sustaining the review of those?

12           MR. DROSENDAHL: No. They just provided the  
13 funding.

14           MS. MARTINCIC: Oh, I see. So they just give you  
15 extra money?

16           MR. DROSENDAHL: Yes.

17           Some of the other things that we're working on,  
18 I'm happy to announce we're implementing case management  
19 again. We're just in the beginning process of doing that.  
20 We're going to go through a list of the sites that we  
21 think are the high priority sites that, you know, require  
22 a case manager. The process that we're going to be  
23 implementing is certain staff members will be case  
24 managers and they will be assigned specific sites.  
25 Other staff members will be -- we're calling them task

1 managers. They're going to be responsible for reviewing  
2 the technical reports that come in for the sites that  
3 aren't case-managed.

4           So we're hoping to concentrate on high priority  
5 sites, but not let any of the other sites kind of fall  
6 through the cracks. It's going to be -- it's not an  
7 instantaneous process, so, if you are working on certain  
8 sites, you may have a designated person that you can  
9 contact from now on.

10           So, we're looking forward to that, and from what  
11 I've heard from the outside, they're looking forward to  
12 that, too.

13           The Municipal Tank Closure program, so far we  
14 went through 58 applications from 20 cities or counties,  
15 and that's resulted in 81 USTs being permanently closed.  
16 So that's an ongoing process, too.

17           And, of course, we're still going forward with  
18 the Route 66 Initiative, and that's going forward. We  
19 have assigned two other case managers to the rest of Route  
20 66. One of them is Sam Rogers, who's helping out SAF  
21 right now, but when he gets done with that assistance, he  
22 will start work on some of the other cities along Route  
23 66.

24           And I think that does it for me. Oh, the Tier 2  
25 software, we're still working on solving some of the bugs

1 to the software, and I would definitely request that  
2 anybody in the outside who happens to come across a bug or  
3 a problem, just e-mail Jeanene Hanley describing exactly  
4 what the problem is and we'll add it to our list and  
5 hopefully we can get that, you know, totally bug free as  
6 soon as possible.

7 MR. GILL: Gail.

8 CHAIRPERSON CLEMENT: Yes, Mr. Gill.

9 MR. GILL: Joe, I have a question. I agree that  
10 we need to call and e-mail bugs in, but we also need to  
11 see what the questions and answers are to the ones that  
12 have been sent in in the last several months. We're  
13 continuing to try to use this model, but we've never  
14 received any answers about how certain things work, and  
15 unless you call and actually get ahold of Jeanene and talk  
16 with her, you don't know the answers to the problems that  
17 you are having. So we need to see something come out in  
18 the interim rather than wait until all the bugs are in,  
19 the questions are in, then write one. I think it would be  
20 better to send out what information you have so we can  
21 resolve the problems we're having right now, one thing.

22 The other thing is, when are we going to see the  
23 how to Tier 2 document, because there are some things in  
24 the model that we can't complete until we see that  
25 document?

1           MR. DROSENDAHL: I totally agree. Jeanene's been  
2 spending a lot of her time helping the department deal  
3 with the Soil Rule. That's kind of slowing down right now  
4 so she will be going back to the Tier 2.

5           In regards to the common problems being submitted  
6 or that we found out in relationship to our program  
7 conference, I've had Jeanene go through and document what  
8 the commonly asked questions are and the answers to those,  
9 so I definitely agree we are working on that, and once we  
10 get that, we'll be having that as a hand-out at the  
11 conference, and also we will be putting that up on the web  
12 site, so I totally agree.

13          MR. GILL: What's the date of the conference  
14 again?

15          DR. DROSENDAHL: The 12th.

16          CHAIRPERSON CLEMENT: October 12th.

17          MR. GILL: So hopefully on October 12th we will  
18 have a question and answer page and maybe the Tier 2  
19 document, I hope?

20          MR. DROSENDAHL: We will see what we can do about  
21 the questions and answers.

22          MR. GILL: Okay.

23          CHAIRPERSON CLEMENT: And they will be available  
24 both at the conference and also posted on the bulletin, is  
25 what you are talking about?

1 MR. DROSENDAHL: Yes.

2 CHAIRPERSON CLEMENT: Because I think that would  
3 be very helpful to the community.

4 MR. GILL: I guess the only other thing I would  
5 like a response from at the conference, or as soon as  
6 possible, is what has been resolved with the issue that I  
7 brought up about, it appears that the model was developed  
8 in the Excel 2000, and most of us have Excel 2002, 2003.  
9 And that appears to be causing a problem, so that's one  
10 I'm waiting to hear what can be done to resolve the saving  
11 problems, and the other little glitches that come up.

12 MR. DROSENDAHL: Okay. I will definitely have  
13 Jeanene definitely have that one on the list.

14 CHAIRPERSON CLEMENT: Ms. Foster.

15 MS. FOSTER: You made a comment that 300 cases  
16 were closed.

17 MR. DROSENDAHL: Uh-huh.

18 MS. FOSTER: Didn't we have at one time 1700 open  
19 LUST cases in the state?

20 MR. MC NEELY: Currently we have, as of like  
21 September 30th, about 1837.

22 MR. DROSENDAHL: Right around there.

23 MR. MC NEELY: And a year ago we had about  
24 twenty-two, seven years ago we had about thirty-four, so  
25 we've almost cut our case load in half in the last seven

1 and a half years. Pretty significant.

2 MS. FOSTER: That is very significant.

3 CHAIRPERSON CLEMENT: Very good.

4 MR. MC NEELY: And I think with the Tier 2, we  
5 will continue doing that now to probably the ground --  
6 when we get groundwater releases, at that point we will  
7 probably slow down.

8 MS. FOSTER: Of those 18,037, approximately, are  
9 groundwater sites?

10 MR. MC NEELY: About a thousand. A lot of those  
11 sites made have been already remediated waiting for  
12 natural attenuation to occur, and that's why we are going  
13 to have case management on most of those sites trying to  
14 push towards cleanup as quickly as possible.

15 CHAIRPERSON CLEMENT: Good. Congratulations,  
16 Joe.

17 Anything else to add on the DEQ updates?

18 Okay. The next agenda item, Financial  
19 Subcommittee Update, Andrea, you have one issue in  
20 addition to the other materials we talked about.

21 MS. MARTINCIC: Having to do with the stakeholder  
22 or regulated community product that ADEQ had.

23 CHAIRPERSON CLEMENT: Correct.

24 MS. MARTINCIC: Before we started working on the  
25 SAF Rules, once that was published to the Secretary of

1 State's office, the Financial Subcommittee had been  
2 meeting for many months on the issue of insurance due to  
3 the impending eligibility phaseout from releases.  
4 Owner/operators are going to have to rely on private  
5 commercial insurance for future releases after that date.  
6 And there was some concern that, you know, everybody in  
7 the community knows that, understands what kind of  
8 coverage they need to be in compliance with the federal  
9 regulations.

10           And so I've been working with the agency, with  
11 Ron Kern in particular, and the agency's developing a  
12 trifold brochure that can be given out to stakeholders,  
13 owner/operators when they're out doing normal compliance  
14 inspections, things of that nature, and the hope was to  
15 have it available at the conference as well. I don't know  
16 if that's going to happen or not. And I provided a  
17 section, very general information and tips for  
18 owner/operators on questions they should ask potential  
19 carriers and what kinds of things they need to look for in  
20 their coverage.

21           So, I think that's going to be a really valuable  
22 tool, and I hope that the agency recognizes that that is a  
23 valuable tool for owner/operators and will go a long way  
24 in making sure that everyone understands the significant  
25 changes that are right around the corner. So I appreciate

1 the agency working with me on that and hope that it will  
2 be of help to folks.

3 CHAIRPERSON CLEMENT: Thank you.

4 We've gone through in great length, No. 6 and No.  
5 7.

6 And now let's jump to Summary of Meeting Action  
7 Items. The only actual meeting action item that I  
8 recorded was getting the letter out to the Director, and I  
9 will take responsibility for that, obviously. I would ask  
10 that Andrea and Hal do a final edit of that letter before  
11 it goes, and my goal is to get that out ASAP, like  
12 tomorrow, so I should have some office time this afternoon  
13 and I will get a copy out to Hal and Andrea just for a  
14 final edit. I am pretty clear, I do believe, on  
15 everything we've agreed to today.

16 Any other action items anybody else captured? I  
17 didn't have any.

18 Discussion of Agenda Items for next Commission  
19 meeting. Do we need a Commission meeting in October is my  
20 question?

21 MS. MARTINCIC: I think we do. I think that  
22 we're going to probably be seeing the Rule move forward,  
23 and I think that there is still issues that are important  
24 to discuss, so --

25 CHAIRPERSON CLEMENT: Any other discussion on

1 that? I mean right now --

2 MS. MARTINCIC: Other than the holidays, I mean,  
3 we may end up not having one later, so I would urge us to  
4 have one in October so that if we need to change or move  
5 updates in November and cancel December or --

6 CHAIRPERSON CLEMENT: That sounds reasonable.  
7 Right now the agenda, the next meeting will be  
8 October 26th, 2005, 9:00 a.m., Room 250. I have the next  
9 --

10 If anybody has agenda items for the next  
11 Commission meeting, let me know. If you don't know today,  
12 we will just continue on like we always do. It may be a  
13 quick meeting, and it may not, so --

14 MR. GILL: Gail.

15 CHAIRPERSON CLEMENT: Yes, sir. Mr. Gill.

16 MR. GILL: I've got an obvious conflict for my  
17 next meeting as it is the same day as the ADEQ conference,  
18 and I'm probably not going to be able to do it on the 5th,  
19 so I might move it to the 19th and ask Al if there is a  
20 room available on the 19th.

21 MS. MARTINCIC: I can't -- I'm going to be out of  
22 town just as well the first Thursday, so I'm going to have  
23 to move my subcommittee meeting.

24 CHAIRPERSON CLEMENT: Just to clarify that for  
25 everybody in the room, both the Technical and the

1 Financial Subcommittee meetings will have to be moved  
2 because of scheduling conflicts. We will get a notice out  
3 in terms of the actual dates and the locations as soon as  
4 possible. The agendas may follow after that so people can  
5 plan on their calendars.

6 Thanks, Hal, and thanks, Andrea.

7 And then anything else for action items, agenda  
8 items? Okay.

9 The last general call -- excuse me, not the last.  
10 I have now the general call to the public. I have one  
11 speaker slip, Mr. Leon Vannais.

12 MR. VANNAIS: Leon Vannais with TR Dynamic.

13 I want to express my appreciation to all the  
14 Policy Commission members and the department for working  
15 so hard on the Rule process.

16 I have one comment. There seems to be a  
17 misconception or an interpretation of the Rule that I  
18 personally don't see, is that the audits that may be  
19 required for financial need is going to be allowed as a  
20 credit against the deductible co-pay obligation, and that  
21 is just not mentioned anywhere in the Rule.

22 The rule specifies what is allowed as a credit  
23 under R-18-12-609, and it says applications and UST  
24 upgrade; so, this 5 to \$10,000 audit is not allowable as a  
25 credit pursuant to this Rule.

1 I'm sorry Ms. Gaylord couldn't be here to hear  
2 that because she was the one, I think, that was mentioning  
3 that during the discussions, so, hopefully, somebody will  
4 share that information with her.

5 Second of all, I have a quick question. There is  
6 a statutory conflict about the payment of UST removals  
7 between 1052(A)(4), says permanent closure of tanks are  
8 reimbursable, then 1306 and 1306 modified 1052(I) to say  
9 that State Assurance Funds will not pay for permanent  
10 closure of an underground storage tank.

11 There are people out in the community right now  
12 that are looking to close their tanks, which have a  
13 release. They're looking to see if this is an eligible  
14 reimbursable cost to the State Assurance Fund. This is  
15 something that would be perfect for the bulletin board.  
16 This is a very clear statutory conflict, and getting some  
17 idea of how people should deal with this would be, I  
18 think, what is what I'm requesting.

19 So either through the Policy Commission -- I  
20 don't know if you need to assign this to a subcommittee or  
21 if the department can just volunteer this information and  
22 put it on the bulletin board, it would be much  
23 appreciated. Thank you.

24 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais.

25 Any other? Because it's not on our agenda, we

1 really can't discuss it on how to resolve it, but we  
2 certainly can include this in future discussions if it's  
3 warranted. And can't even go there.

4 Any other comments from the public?

5 Wow. We are so good. We only had one comment  
6 and we're going to be done before noon. Okay.

7 Announcements. The next meeting Policy  
8 Commission meeting will be held October 26th, 2005, 9:00  
9 a.m., Room 250 at ADEQ, 1110 West Washington Phoenix,  
10 Arizona.

11 And on that note, we will adjourn the September  
12 28th, 2005 UST Policy Commission. Thank you, everybody.

13 (11:39 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 116 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 28th day of September, 2005.

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Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477