

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
February 22, 2006
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
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25	COMMITTEE MEMBERS PRESENT:	

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Gail Clement, Chairperson

3

Hal Gill, Vice-Chair

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Philip McNeely

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Karen Gaylord, Esq.

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Tamara Huddleston, Esq.

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Cynthia Campbell, Esq.

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Myron Smith

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Andrea Martincic (Telephonic appearance.)

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Theresa Foster

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Jon Findley

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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 This is the February 22nd meeting of the Underground

5 Storage Tank Policy Commission. Welcome.

6 Let's take a roll call, if we can start with Ms.

7 Foster.

8 MS. FOSTER: Theresa Foster.

9 MR. FINDLEY: Jon Findley.

10 MS. GAYLORD: Karen Gaylord.

11 MR. GILL: Hal Gill.

12 CHAIRPERSON CLEMENT: Gale Clement.

13 MR. MC NEELY: Phil McNeely.

14 MS. HUDDLESTON: Tamara Huddleston.

15 MS. CAMPBELL: Cynthia Campbell.

16 MR. SMITH: Myron Smith.

17 MR. GILL: Andrea.

18 MS. MARTINCIC: And Andrea Martincic by

19 telephone.

20 CHAIRPERSON CLEMENT: We have a great turnout

21 today. Thank you, everyone, for being here.

22 Let's start with approval of the meeting minutes.

23 Did everybody receive copies of the November 2005 and

24 January 2006 minute meetings?

25 Has everybody had a chance to review them? Is

1 there a motion to approve?

2 MR. GILL: I move approval.

3 MS. MARTINCIC: I second it.

4 CHAIRPERSON CLEMENT: All in favor?

5 (Chorus of ayes.)

6 CHAIRPERSON CLEMENT: Motion approved. Meeting
7 minutes from November 2005 and January 2006 have been
8 approved.

9 Phil, I wasn't sure where the various rule
10 packages were, so I left this next agenda item for you to
11 talk about what was important. So the next agenda item is
12 the rules of affecting the UST program.

13 MR. MC NEELY: Thank you. There is four sets of
14 rules that we are working on right now. The first one,
15 Soil Rule amendments. We're trying to finalize that due
16 to formal process. That will probably be proposed in
17 April for the formal process. We're working on the
18 preamble right now.

19 The other two sets, other divisions are working
20 on the petroleum contaminants -- not petroleum, but
21 Special Waste Rules for petroleum contamination. They're
22 still in process, and there will probably be months of
23 public meetings to hash out issues with that rule, so we
24 have a way to go. That's an informal process.

25 The air quality general permit for SVE systems,

1 that's probably still a month away from public notices.
2 That's actually not a rule. It's a public notice for the
3 general permit, and they're making all revisions that the
4 UST stakeholders had about using the carbon for
5 chlorinated VOCs and putting monitoring requirements in,
6 so they're actually working on what we suggested to them.

7 Then the last set of rules is the State Assurance
8 Fund Rules. Last time I announced that we were trying to
9 get on the March 7th agenda for GURC, and it's been moved
10 back to April 4th.

11 CHAIRPERSON CLEMENT: One question. I did not
12 receive either an e-mail with the rules attached or a
13 disk, and apparently some people did and some people did
14 not. Is that correct? Was everybody on the Policy
15 Commission sent the information? Did anybody not get them
16 besides me? Because I did not get them. Ms. Gaylord did
17 not get them?

18 MS. CAMPBELL: I didn't get them, but I think I
19 did receive an e-mail saying we're having a problem
20 getting them to you, give us a call and I went out of
21 town.

22 MR. MC NEELY: Actually, we sent it three
23 different times from different computers, and I think it
24 was too big of a file so then --

25 MS. FOSTER: It was definitely too big of a file.

1 MR. MC NEELY: So we sent another e-mail to
2 everybody without the file saying please call Tara Rosie
3 and we have CDs, so we have the CDs available, and they're
4 available. I don't have them with me, but we have copies.
5 It's on a disk.

6 CHAIRPERSON CLEMENT: If anybody needs to know,
7 here it is. Hal gave me my copy yesterday, printed it out
8 for me, so if anybody -- could we just let Phil know who
9 would like a CD, then we could just take care of that.
10 Karen? Cynthia?

11 I think we were confused. I really didn't pick
12 that up on that, that we were supposed to call you.
13 That's more than you probably want.

14 MR. MC NEELY: No problem. We wanted everyone to
15 get them. We did it immediately, the day after our Policy
16 Commission meeting so everyone had time to look at them.

17 MS. MARTINCIC: Phil.

18 MR. MC NEELY: Yes.

19 MS. MARTINCIC: Is there any way that they could
20 post that SAF Rule on the link or the PDF on your website?
21 I've heard it is not on the Secretary of State's page
22 either.

23 MR. MC NEELY: It's not on the Secretary of
24 State's page because the GURC staff is asking --

25 MS. MARTINCIC: Or GURC's page, either, yeah.

1 MR. MC NEELY: GURC staff -- I will tell you, we
2 jumped the gun a little bit. They are asking for changes,
3 and they haven't given us their written comments yet, so
4 there is going to be changes to -- at least to the
5 preamble. I'm not sure about the rule or not. And we
6 have until March 15th to get those changes to GURC, but
7 they haven't given us what they want to change. They just
8 said they have some comments and they want to change some
9 of the preamble, so it's going to change, so that's why
10 they don't put it up on their web, and we don't put it on
11 our web because it's just a work in progress.

12 CHAIRPERSON CLEMENT: We appreciate you getting
13 the rule out as we were more interested in seeing the
14 process. I think everybody recognizes and should
15 recognize that it will change between where it is now and
16 where it is finally published, so we all have to
17 anticipate that, but I don't anticipate it being too
18 fundamental. We don't know, though.

19 MR. MC NEELY: And that's the thing, I don't
20 know.

21 CHAIRPERSON CLEMENT: You don't know?

22 MR. MC NEELY: I sort of know, but really I
23 haven't had anything in writing so --

24 CHAIRPERSON CLEMENT: Okay. Thank you.

25 MR. MC NEELY: You are welcome.

1 CHAIRPERSON CLEMENT: Any other comments on that?
2 Questions about the rules? Okay.

3 Any news on the federal UST legislation?
4 Anything new?

5 MR. MC NEELY: They're working on it. They were
6 just talking about -- Congress in the budget, they're
7 going to give -- actually they gave the UST program some
8 more money to implement this. All the states were going
9 to get like an extra \$28 million to do inspections for the
10 air quality, people, more quality. People in Washington
11 D.C. complained, saying we're being cut and UST is being
12 increased, so that money may not ever come to fruition for
13 the states.

14 So, I think right now we're still planning on
15 about the same amount of funding from the feds as we got
16 last year, which is only \$200,000 for the compliance
17 program, and there are a lot of requirements to implement.
18 So I think it's just a work in progress. All the states
19 are working with EPA trying to come up with guides on the
20 red tagging and the operator training, which so far
21 nothing has come from the EPA.

22 CHAIRPERSON CLEMENT: I will probably keep this
23 as a standing agenda item. You can just say if there's
24 not any changes. We will just kind of keep everybody
25 abreast of what's going on.

1 MR. MC NEELY: I think Andrea was going to call
2 Steve Linder. I can do that, too, if you really want him
3 to come and talk.

4 MS. MARTINCIC: I called Steve Linder and left a
5 message and I have not heard back from him. It sounded
6 like in his message he was travelling a lot, but he
7 usually would get back to me, so, I haven't heard anything
8 yet.

9 CHAIRPERSON CLEMENT: Are the Commission members
10 interested in having the presentation by EPA and/or DEQ on
11 this legislature package? I think it would be very
12 helpful.

13 MR. MC NEELY: I could do that next month.

14 CHAIRPERSON CLEMENT: Andrea, do you want to -- I
15 just want to be sure how we're going to handle this. Are
16 you going to continue to see if Steve can support Phil
17 with a presentation?

18 MS. MARTINCIC: Yeah. I left him a message about
19 trying to get a copy of the presentation that they gave at
20 my luncheon, and then I also mentioned to him that there
21 might be some interest on the part of the Commission of
22 having him actually come out in person and to call me and
23 let me know about the possibility or not, so I just
24 haven't heard back from him.

25 CHAIRPERSON CLEMENT: Because I did actually go

1 through our action list, and one of our action items was
2 the distribution of that material to the Commission, and
3 since you don't have it, you can't distribute it yet.

4 MS. MARTINCIC: Right, right.

5 CHAIRPERSON CLEMENT: Okay. So, we will plan on
6 next meeting, perhaps between you and Steve and/or
7 yourself alone, Mr. McNeely, giving us a more thorough
8 presentation on that.

9 MR. MC NEELY: All right.

10 CHAIRPERSON CLEMENT: The next agenda item, Mr.
11 McNeely is still up on ADEQ updates.

12 MR. MC NEELY: I will start off with personnel.
13 Almost every month I tell you how we're trying to hire
14 people. We've lost six Hydro IIIs in probably the last
15 year and all of them have gone to different states. We've
16 lost them to Alaska, Washington, Oregon, Montana, New York
17 and Miami. So we've lost six to different states. And
18 the last three hires we've had were from Texas, Utah and
19 Colorado.

20 CHAIRPERSON CLEMENT: Interesting.

21 MR. MC NEELY: So we can't hire from within
22 Arizona and we can't keep people from leaving Arizona.
23 Actually, we're trying to do new stuff. We put in ads in
24 the Arizona Republic on Sunday a few weeks ago. It sort
25 of costs a lot of money, \$1,000 on an ad, but we did get

1 resumes, but most of the resumes we've already seen
2 before. We're trying to do a lot of ads on
3 inexpensive -- to put on these little websites, we're
4 trying to do that. So we're trying to market, but at the
5 same time Superfund is looking for people, Water Quality
6 is desperately looking for people. Everyone is looking
7 for the same people. DWR is looking for hydros, so there
8 is a limited pool of resources.

9 MR. FINDLEY: What is the requirement, a
10 bachelor's degree in --

11 MR. MC NEELY: To be a Hydro III you have to have
12 a bachelor's degree in either geology or hydrology or a
13 science-related field and four years to be a Hydro III,
14 and that's the problem. You can make probably about
15 \$20,000 more in the outside than you can in the state. So
16 people that come to this state are people that want a
17 different lifestyle, want to spend time with their kids,
18 are ready to retire. That's the type of people that come
19 to the state. It's hard to find people with four years
20 experience to come to the state.

21 CHAIRPERSON CLEMENT: Well, I will give an ad. I
22 went to the state with four years of experience, and it
23 was one of the best opportunities I ever had and I learned
24 so much, and I'm very grateful for that experience, so
25 anyone out there that you know, or yourselves, should

1 really seriously consider it. It is not a financially
2 beneficial opportunity, however. And I finally left
3 because I had to buy a new car, but it is a wonderful
4 organization to work for, frankly. I learned an awful lot
5 that I would never have learned in the private sector.

6 MR. FINDLEY: Did you post this at the
7 universities?

8 MR. MC NEELY: Yeah, we are going to ASU and
9 University of Arizona, but most of those people are fresh
10 out of college, and with a master's, you only need two
11 years' experience, so we're thinking about even hiring
12 people sort of entry level, try to train them, but that's
13 a problem. It's a real problem, because then you train
14 them and they leave, so it's a training ground, so it is a
15 problem with what we do. We really need people that
16 understand what we're doing, so it's going to be an
17 ongoing problem, there is just no doubt. We will keep
18 working on it.

19 CHAIRPERSON CLEMENT: And to hire contract
20 employees, you've had to go to that in some of the areas,
21 like risk assessment. In terms of cost benefit, does it
22 really hurt you financially to have to go in that
23 direction, or -- I mean, obviously it's a lot, I would
24 assume more expensive.

25 MR. MC NEELY: I think hiring contractors are

1 okay when you are working on a specific task, review risk
2 assessment or review disclosure requests. We are talking
3 about case management when we had the ongoing mediation.
4 You can't really have a contractor do that, because what
5 would happen is you will end up paying your contractor
6 \$20,000 more than you pay your own people, and eventually
7 your whole staff would be contractors, so it's really a
8 difficult situation.

9 CHAIRPERSON CLEMENT: Really, if you know -- I'm
10 serious. I know it doesn't seem that way, but it is a
11 wonderful opportunity to work for the State of Arizona,
12 the Department of Environmental Quality, and, you know,
13 it's a nice experience so --

14 MR. MC NEELY: Well, okay. So we've moving on.
15 We're still trying to move to the 4th floor. That's going
16 to happen in about a month. We'll all be together. We
17 are getting a lot more efficient. We do more and more
18 with less and less as the years go by, so that will
19 continue.

20 And, well, that's pretty much it for the program
21 update.

22 CHAIRPERSON CLEMENT: Any questions for Mr.
23 McNeely, comments?

24 Let's move on to the UST corrective action
25 monthly update. Mr. Drosendahl.

1 MR. DROSENDAHL: My name is Joe Drosendahl. I'm
2 the manager of the Corrective Action Section. I think in
3 your packet you have a list of some beans from the
4 Corrective Action Section. As of the end of January,
5 we've closed 80 percent of all reported releases, and
6 currently we have approximately 56 corrective action
7 documents that are under review. The vast majority of
8 those are SCRs.

9 And then I gave you an update on the Municipal
10 Tank Closure Program, where as of last week we've removed
11 94 USTs through that program.

12 And at the bottom, this time I gave a summary of
13 some the other activities that we are doing. Of course
14 we're still implementing or performing the Route 66
15 Initiative. We are going to be going to case management.
16 We're hoping to do that the first of March, so hopefully
17 that will be -- help everybody inside and outside.

18 And on Valentine's Day we had an external
19 technical presentation and demonstration on Jeranite. And
20 I definitely want the UST stakeholders, if they know of a
21 subject that would be beneficial, to come to DEQ to give
22 some kind of seminar or presentation, or whatever, I
23 reserve this room every other month for external people to
24 come in and give whatever presentations they want, so
25 definitely let me know if you know of any subjects that,

1 you know, you know that would be beneficial to present to
2 the UST program, and we would probably open it up to the
3 rest of DEQ, too.

4 So that's the summary of the Corrective Action
5 Section. Is there any questions on that? Myron?

6 MR. SMITH: Joe, only one new LUST in January?

7 MR. DROSENDAHL: Yeah.

8 MR. SMITH: Really?

9 MR. DROSENDAHL: As you can see, in January we
10 closed 26, so we're definitely still closing more than
11 we're opening. We keep expecting at least a little
12 increase in the number of releases reporting, because the
13 eligibility goes away in July, but we haven't seen it yet.
14 We're definitely planning on, once again, getting the
15 message out that as of July 1st, new releases aren't
16 eligible for the SAF, just to make sure that no one comes
17 back and says, oh, you didn't tell us.

18 So, if you know of anyone that doesn't know that
19 date, definitely let them know, because right now we
20 haven't seen any great influx.

21 MS. FOSTER: Joe, you talked about training of
22 your staff in this room. We've had an open invitation to
23 DEQ to come out and see an active remediation site going
24 through some major mile stones, installation of an
25 oxidizer, and spending a lot of money right now, and no

1 one's taken us up on it.

2 MR. DROSENDAHL: I will give you a call and maybe
3 set up some dates and everything and maybe we can just
4 advertise that as being the next technical presentation.
5 Thank you.

6 CHAIRPERSON CLEMENT: Thank you.

7 Any other questions, comments for Mr. Drosendahl?

8 We will move on to your presentation. I think
9 you have the SAF.

10 MR. MC NEELY: Tier II.

11 CHAIRPERSON CLEMENT: Tier II, I'm sorry, Joe, I
12 got to find my agenda.

13 MR. DROSENDAHL: We've been talking with the
14 contractor that has put together the Tier II software.
15 There were some remaining bugs that were discovered, and
16 we are coming to a close on that. Probably what's going
17 to be happening is we're going to issue another version of
18 the Tier II software, including a revised owner's manual,
19 shortly. So, we're hoping that, you know, that puts an
20 end to, you know, the contract that puts the Tier II
21 software together, and hopefully it will be a lot easier
22 to use by the outside and internal once these bugs get
23 finally fixed.

24 CHAIRPERSON CLEMENT: Is there a time frame for
25 that, Mr. Drosendahl?

1 MR. DROSENDAHL: Just as soon as we can. I will
2 definitely -- we will definitely put a notice on our
3 website. We will probably do, you know, maybe a massive
4 e-mail and also announce it at the next meeting of this
5 when that's appropriate.

6 MR. GILL: Joe, do you know, will these
7 corrections fix the problems with being an older version
8 of Excel?

9 MR. DROSENDAHL: No, unfortunately, because that
10 would take a lot of reprogramming. We do have that as one
11 of the things we want to do for some of the Tier II,
12 because we know that that's definitely a problem to some
13 stakeholders, so that's kind of like Phase II of the Tier
14 II to make it a lot easier to use because of that reason,
15 and we have several other things that we'd like to do to,
16 you know, make it new and improved, but that's probably
17 the majority.

18 MR. GILL: Can the current contractor make a list
19 of the issues that are going to arise because of the old
20 version?

21 MR. DROSENDAHL: I don't see why we can't.

22 MR. GILL: That would be helpful. It's been a
23 while since I've used it, so I kind of forgot everything,
24 all of the problems, but it would be nice to know what is
25 going to come up before it happens and then you can figure

1 out ways to work around it.

2 MR. DROSENDAHL: Okay.

3 CHAIRPERSON CLEMENT: Could you also identify
4 between Mr. Gill and Mr. Drosendahl, what are the options
5 for using the older Excel spreadsheet in terms of
6 acquiring it? The state can't give you a license or a
7 copy of that, is that correct? You have to get it
8 somewhere? You have to get a licensed version?

9 MR. GILL: I found that it is available on E-bay.

10 CHAIRPERSON CLEMENT: You can't go back to Excel
11 and say, I've got your 2001 version, can I get your 1997
12 version?

13 MR. GILL: I haven't tried, but I kind of doubt
14 it, but I hadn't tried that.

15 CHAIRPERSON CLEMENT: Because it might be
16 helpful, obviously, if you can work in the package, the
17 spreadsheet package that a program will accept, it's going
18 to be a lot simpler than trying to fix the problems
19 created by the wrong spreadsheet. Could somebody take
20 that on to find out if there is a way to get it through
21 Excel? Would you mind doing that? I think Mr. Gill is
22 volunteering.

23 MR. GILL: All right.

24 MR. FINDLEY: I'd just add, because it's a
25 Microsoft product; right? You can't walk into like a used

1 book store or -- because Microsoft has imposed
2 restrictions on selling used software, you can't walk in
3 and find their products for the most part, so, it's
4 difficult.

5 CHAIRPERSON CLEMENT: Yes. Mr. Smith?

6 MR. SMITH: What version is it on, '97?

7 MR. GILL: '97.

8 MR. SMITH: Okay.

9 CHAIRPERSON CLEMENT: Let me just ask a dumb
10 question. Is it legal if somebody personally has a '97
11 version to give it to other people? Really, you'd have to
12 have a license for that?

13 MR. DROSENDAHL: I don't know.

14 CHAIRPERSON CLEMENT: Because I was thinking, if
15 one person has one, could you give it to everybody?

16 MS. HUDDLESTON: Joe, some software programs,
17 when you save it, you can save it in an earlier version.
18 Would that work with the program if you did that?

19 MR. DROSENDAHL: I'm definitely no computer
20 person, so I'm pleading ignorance here.

21 MR. GILL: The problem with this one is that you
22 can't save it. That's the problem I'm having. It won't
23 save.

24 MS. HUDDLESTON: I'm not familiar with the
25 program, but I know some programs you can do that.

1 MS. FOSTER: You can save it, but then when you
2 open it back up, you can open it up with the Excel you
3 have on your machine.

4 In terms of acquiring it from someone else, my
5 understanding of the license process, it's licensed for
6 one owner/operator to use it, so if that person gave it to
7 someone else, they'd have to strip it off their machine
8 entirely.

9 CHAIRPERSON CLEMENT: So that will not work.

10 MR. GILL: I will find out, if you already have
11 an existing version, if you can get an older version.

12 CHAIRPERSON CLEMENT: Sometimes they upgrade you
13 the other way.

14 Thank you very much. Any other questions on
15 that, the Tier II?

16 We had originally talked about having a Technical
17 Subcommittee presentation, but you're not there yet?

18 MR. DROSENDAHL: No, no. I think that might be
19 better to wait until we get the new version and then go
20 from there.

21 CHAIRPERSON CLEMENT: I think so.

22 MR. DROSENDAHL: But we're hoping to get that
23 done real soon, 'cause we just need to move on.

24 CHAIRPERSON CLEMENT: Thank you. Anything else,
25 Joe, on that?

1 Any other questions or comments? No?

2 Let's move on.

3 The SAF monthly update by Mr. McNeely.

4 MR. MC NEELY: The SAF monthly update. I just
5 passed out yesterday the rule on disk, so anyone that
6 doesn't have one, I do have about six more disks. And
7 anybody in the audience, I have disks of the SAF rules.

8 The SAF updates, the bar graphs, if you look in
9 January, our trend is continuing, we processed 82. We
10 received 62, so we processed -- what is it, six months
11 right now more than we received in, so we're done to 134
12 active, and that's -- most of those are -- I mean just
13 recently received, really. The 24 over 90 levels are, a
14 lot of those are administrative notice letters that we
15 send out, and we're waiting for information. So, we're
16 caught up, but the bad news is we're probably going to get
17 few hundred more very soon when we have the settlement
18 with Conoco Phillips, because they have a lot of
19 applications waiting to be reviewed, so once we settle
20 that, we're going to have hundreds more to look at, but we
21 will try to push those through quickly.

22 In terms of appeals, in January we had 22 and
23 that trend is a good trend, also. From November, 43;
24 December, 33; January, 22; it's a good trend less appeals.
25 And formal appeal requests, we had three requests and one

1 final determination. So, in general, the appeals seem to
2 be dropping off. We are communicating a lot over the
3 phone, and it seems like the process is working fairly
4 well right now.

5 We have had a couple of staff leave from the
6 Claims Review Unit. And one is the person that went to
7 Washington, another one went to our state lead program, so
8 we are losing people in claims review.

9 CHAIRPERSON CLEMENT: What is their position
10 title?

11 MR. MC NEELY: Hydro III.

12 CHAIRPERSON CLEMENT: They are Hydro IIIs.

13 MR. MC NEELY: One thing about doing claims
14 review, and Leon knows this because he did it, it's a
15 difficult job. You are a technical person, you are a
16 geologist and you are looking at numbers and how many foot
17 of drilling, and you can do it for a couple of years, and
18 I think after a couple of years, people burn out, and they
19 want to do real geology or do something different, so it's
20 going to be like that always. We always have to get new
21 people in if we can find them.

22 CHAIRPERSON CLEMENT: Are you in a position to
23 provide financial incentives like you could anymore, or
24 are you pretty much tied to the cost schedules?

25 MR. MC NEELY: No. I uncovered those positions,

1 so they are uncovered. Unfortunately, a lot of other
2 programs learned how to uncover people, so we are all
3 competing for the same staff. So we can pay a little
4 more, but still it's more compared to -- I mean, I covered
5 a person, but compared to outside, it's nothing compared
6 to that.

7 CHAIRPERSON CLEMENT: Ms. Foster?

8 MS. FOSTER: Phil, it still would be nice to get
9 more phone calls. Instead of getting an informal appeal
10 or a determination letter saying that the amount's been
11 approved as zero, it would be nice to have a phone call if
12 we're missing a report or a document.

13 MR. MC NEELY: Okay.

14 CHAIRPERSON CLEMENT: Statistically, it's very
15 good, then. We are moving forward. Again, compliments to
16 Tara. She's not been attending. That's a lot of work for
17 a few people.

18 MR. MC NEELY: Thank you.

19 CHAIRPERSON CLEMENT: Any other comments or
20 questions for Mr. McNeely?

21 Okay. Where -- there we are. The next agenda
22 item is use of e-mail correspondence by Commission and
23 Commission Subcommittees. And I am the listed person to
24 speak. Nobody's listed here.

25 Okay. We were very well instructed last year

1 about how the meeting law works, conflict of interest, et
2 cetera, and we also received additional clarification
3 regarding the e-mail correspondence by Commissioners. And
4 it has come to my attention by one of the Commission
5 Members, who's very skilled in these things, Ms. Gaylord,
6 that we may need to improve our process to be sure that we
7 are meeting the letter and the intent of the open meeting
8 law.

9 And if I say this wrong, the three attorneys that
10 are at this table, please correct me, because I'm doing my
11 best. But it's my understanding that how we communicate
12 in e-mail cannot be construed to be a meeting or a
13 discussion or lobbying one another or anything of that
14 nature. So the cleanest or the clearest way to avoid that
15 potential conflict or that potential issue, my
16 understanding is, if correspondence -- it's not like I
17 want to be the guru here, but if correspondence comes from
18 the Chair, and then if a Commission member has
19 correspondence regarding the correspondence from the
20 Chair, that it should just be to the Chair, and then I can
21 bring it to the next meeting or send out another e-mail or
22 clarification, whatever is necessary. So we can't just
23 send out these broad e-mails either from the Commission or
24 the subcommittees, it has to be more formally done.

25 And one question I have is regarding,

1 particularly the Technical Subcommittee, because I think
2 Hal does an excellent job communicating with a very wide
3 audience, and that's really important communication. And
4 he's asking for input typically in his communication, how
5 does that figure into what is the best way to manage this
6 so we are not in any way, shape or form, you know,
7 affecting the open meeting law?

8 Should we have those -- Ms. Huddleston?

9 MS. HUDDLESTON: What are you asking for?

10 MR. GILL: We're putting together a matrix of
11 issues and concerns and clarification for permitting for
12 remedial systems, and I sent out the data that I had
13 collected so far to the -- prior to my past subcommittee,
14 or the one before, I can't remember which, to all the
15 consultants on my list saying here's what I have, the
16 whole purpose of this is for you to add information to it
17 about different cities and towns and counties and any
18 state permits, so everybody -- we can get this matrix
19 populated so everybody can see what the issues are.

20 And I think where I made my mistake is, I cc'd
21 the Policy Commission because this is what was going to be
22 in our next meeting, and it probably would have been okay
23 if I had just said, here's discussion on it for the next
24 meeting rather than cc'd.

25 But I don't think there is any -- you know, none

1 of the Commission members are on my consultants list. But
2 I don't think there is any restrictions sending it out to
3 consultants, because that's who I represent, but I either
4 don't cc or I make it a completely separate e-mail saying
5 here's discussion items for the next meeting.

6 CHAIRPERSON CLEMENT: Ms. Gaylord?

7 MS. GAYLORD: The question we're struggling with
8 is, can Hal have a free discussion in e-mail with
9 stakeholders who are not a member of the subcommittee, and
10 the question is difficult because we don't have a formally
11 constituted subcommittee. It's Hal. And, we don't have,
12 you know, three Commission members who are members of the
13 subcommittee, so it's a little bit confusing, I think, to
14 try and figure out, is it clear that those stakeholders
15 are not members of the subcommittee and that he can have a
16 free discussion with them in e-mail of items that are
17 going to be on our agenda.

18 MS. CAMPBELL: I will try that one. I think
19 that's unclear. I mean, the legislation that created the
20 UST Policy Commission, they talk about subcommittees of
21 the Commission. I would think that by definition to be a
22 member of the subcommittee, you have to be a member of the
23 Commission to be a member of the subcommittee as opposed
24 to someone who helps out. I personally don't see anything
25 wrong with that.

1 What I've seen also, though, Hal, is sometimes
2 you send out e-mails where you're kind of exhorting the
3 stakeholders to come to a particular meeting because there
4 is going to be an item discussed that may be
5 controversial, that they certainly might want input on,
6 and you may express in that e-mail that you have some
7 concerns about that. I've received those e-mails. I
8 think that gets a little more dicey in terms of the open
9 meeting law.

10 Maybe the solution is to take the Commission
11 members off of that large e-mail list that you've got so
12 then you are just sending it to the stakeholders.

13 MR. GILL: Gail's the only one that's on my
14 consultant list, because she's a consultant, but, like I
15 said, the problem is I'd cc you guys.

16 MS. CAMPBELL: Right.

17 MR. GILL: And if there is some -- but I guess
18 the other question is, if I do want to assume that as
19 discussion, is that okay as well, as long as I'm not
20 asking for something, saying here's what we put together,
21 here's what it will be at the next meeting?

22 MS. CAMPBELL: You are staying you're going to
23 send e-mails to the Commission members saying, here's one
24 of the discussion items that's on the next agenda?

25 MR. GILL: Yes.

1 MS. HUDDLESTON: I don't see a problem with that
2 as long as there is continuing discussion from other the
3 members, and the issue is using the e-mail to start
4 formulating opinion, to have a discussion and start
5 formulating opinion, which needs to be done in public so
6 the public has input, and here's what's going on.

7 MR. GILL: My mistake was cc'ing it with what I'd
8 asked for from everybody, from the consultants, and that's
9 easy to remedy. I won't talk to you about it.

10 CHAIRPERSON CLEMENT: That's what I am a little
11 concerned about, that we won't be informed, but we could
12 be informed -- correct me if I am wrong and I'm
13 understanding this -- we could be informed about the
14 agenda items. He could directly send the Commission
15 members the agenda items, he just can't say like this is a
16 big deal or I have a concern about this. I mean, it could
17 be construed, you know, that he's trying to influence
18 through e-mail, perhaps, I don't know. We want to be
19 careful. That's all.

20 And the other point about subcommittee members
21 and more formalizing that process versus -- we frankly
22 have been fairly casual and it's been a consensus process
23 in the actual meetings, I would challenge each member of
24 the Policy Commission to consider becoming an official
25 member of one of the two subcommittees. And my goal would

1 be that each subcommittee has three members that routinely
2 could show up for these meetings.

3 Now, Ms. Gaylord.

4 MS. GAYLORD: I don't know how helpful this is,
5 but I have been on a subcommittee on another board and I
6 tried that for three years and finally gave up because I
7 could never get a quorum. It was so hard to get busy
8 people to come to subcommittee meetings, so I have exactly
9 the same problem as Hal has. I have a subcommittee where
10 I am truly the only official member, and I just -- you
11 know, I just try to bend over backwards to make sure I
12 treat everything very formally, and I don't really have a
13 lot of discussion by e-mail and it's just -- it's
14 difficult.

15 CHAIRPERSON CLEMENT: I still challenge every
16 member of the Policy Commission, and I will formally
17 commit on the record to be a member of a Technical
18 Subcommittee, support Hal in the work that he's done which
19 is certainly some expertise that I can provide.

20 Mr. McNeely?

21 MR. MC NEELY: But if you do get two or three --

22 CHAIRPERSON CLEMENT: Then you have to have a
23 quorum.

24 MR. MC NEELY: Well, if you don't show up, one of
25 the two, then you have to cancel the meeting. That might

1 be more of a --

2 CHAIRPERSON CLEMENT: More of a hassle than it's
3 worth.

4 MR. MC NEELY: It might be.

5 CHAIRPERSON CLEMENT: Let me take that off the
6 record and say for now -- excuse me, let me correct the
7 record, and let's all think about that, and at the next
8 meeting, if anyone is truly committed to the
9 subcommittees, we could perhaps, you know, think about
10 that over the next month or so. So, anyway --

11 Mr. Smith?

12 MS. SMITH: Do you have to cancel a meeting if
13 there is not a quorum? I think we have continued a
14 meeting without a quorum. You cannot?

15 CHAIRPERSON CLEMENT: You have to cancel. We
16 were pretty well informed last year we have to cancel.

17 MR. SMITH: Even if there is no vote, it's just a
18 dissemination of information and discussion?

19 MS. GAYLORD: A lot of boards have followed that
20 practice in the past, where they have the meeting anyway,
21 and they say we just won't take action, but my
22 understanding is that that is really frowned on.

23 CHAIRPERSON CLEMENT: The presentation we had,
24 she was pretty clear that that was not considered
25 appropriate, because even though you're not voting, you're

1 discussing, you're presenting information and, you know,
2 then you are having a meeting, I think it's the
3 understanding I got out of it.

4 Mr. Gill?

5 MR. GILL: The other concern was is that in my
6 meetings, we don't take votes. We will ask the members
7 there, is this something we want to take forward to the
8 Policy Commission and get the consensus. Is that how you
9 do it or is that a problem? I mean, because we don't vote
10 on things, and then if we don't have consensus, we will
11 discuss it and say --

12 CHAIRPERSON CLEMENT: Ms. Gaylord.

13 MS. GAYLORD: Arguably, my understanding is that
14 the only people that could vote are actually the
15 subcommittee members, and if you're the only subcommittee
16 member, then what you are taking back to the board is the
17 info that you've got from the stakeholder nonsubcommittee
18 members.

19 CHAIRPERSON CLEMENT: That works. Okay. Well,
20 we are going to do our best to meet the letter and the
21 intent of the law. And if we aren't, again, those of you
22 who are more skilled in this than certainly I am, please
23 let us know if we're making mistakes, or if you see
24 something, call our attention to it so we can improve it
25 or correct it. Thank you.

1 Okay. We're on to now -- Andrea, while you're on
2 the phone.

3 MS. MARTINCIC: Right. Right.

4 CHAIRPERSON CLEMENT: Okay. We're going to move
5 it.

6 MS. MARTINCIC: I'm still here.

7 CHAIRPERSON CLEMENT: I have a handout, and
8 you're not going to get it because you're not here, but I
9 have the actual letter that we sent the director of the
10 attachment that went to it, because I noticed that things
11 that I got did not have the signature on it and there was
12 a minor change to it.

13 So, this is the September 29th, 2005 letter that
14 was approved by the majority of the Commission members and
15 it was sent to Director Owens, and then the attachment
16 that we included as information only, it's a three-page
17 attachment.

18 What I did was, based on the input from Andrea
19 Martincic and the Financial Subcommittee, and a fairly
20 brief review of this inch-and-a-half document, went back
21 and looked at what had been changed from our original
22 comments versus what still remains exactly the same, and I
23 believe that very few things have been changed, so I put a
24 list of the issues that still remains outstanding based on
25 our letter. So I took out the issues that had been

1 addressed, and I just -- and I'm going to hand this out --
2 and I just added -- and I just have the list of issues
3 directly from the letter that we -- that I understand to
4 be still issues that have not been addressed according to
5 our letter to the Director.

6 MS. CAMPBELL: Is there an extra one of these?

7 CHAIRPERSON CLEMENT: Let me see. Sorry.

8 And, Andrea, it's the same list that you sent me,
9 except where there was one correction, you had a sub
10 bullet under Economic Impacts just titled Scoring Issues,
11 and actually the letter that we sent Director Owens had it
12 as Scoring and Ranking Issues, and had another regulatory
13 citation in there, so I wanted to use that, but everything
14 else that you sent me is the same.

15 MS. MARTINCIC: Okay. So basically you just past
16 out to the Commission members the original letter and then
17 the issues from the original letter that are still
18 identified by the Financial Subcommittee as being issues
19 that weren't changed in the rule that went to GURC?

20 CHAIRPERSON CLEMENT: Correct.

21 MS. MARTINCIC: Did you want me to get started?

22 CHAIRPERSON CLEMENT: Yes, please.

23 MS. MARTINCIC: The Financial Subcommittee met
24 last Friday on February 17th, and basically what we did
25 was, we went through the September 29th letter since that

1 was the most recent communication that the Policy
2 Commission had communicated to the Director on the SAF
3 rule, and I just figured that would be an easy place to
4 start to look at what issues could be changed with the
5 rule that went to GURC versus what were the original
6 issues that we had been communicating to the Director.

7 So, basically, the subcommittee found that there
8 were two issues that were changed within the rule that
9 went to GURC that were identified by the Commission, by
10 the Subcommittee and Commission, and the two items that
11 the agency, it does look like, made a change on were the
12 Direct Assignment of Benefits under Economic Impact, and
13 Inappropriate Seal Requirements that were listed under
14 Other Impacts.

15 And so we removed those two items from sort of
16 the list of issues, but the Subcommittee felt strongly
17 that all the other issues are still part of the rule that
18 went to GURC and that those are still important issues and
19 reasons why, you know, the subcommittee is concerned about
20 the SAF Rule.

21 So, the subcommittee was actually hoping that the
22 Commission could look at the issues, and since they're the
23 same issues that we identified back in September and are
24 still a problem with the SAF Rule, that we might be able
25 to get the Commission to agree to send maybe another

1 communication on those issues, the same issues. Sorry.

2 CHAIRPERSON CLEMENT: The title.

3 MS. MARTINCIC: So, I don't know, we can go
4 through them all. I know we had that lengthy meeting
5 before we sent the September letter to begin with, and,
6 you know, quite frankly, the issues really have not
7 changed, aside from those two that we've removed from the
8 list, so --

9 CHAIRPERSON CLEMENT: Just let me ask Mr. McNeely
10 if we are correct in our interpretation or if we missed
11 something or if I missed something.

12 MR. MC NEELY: Don't ask me if you are correct in
13 your interpretation, because I disagree with most of this
14 stuff. The rules aren't retroactive. We took care of
15 that, but you guys have a different idea of what
16 retroactivity is.

17 We did change the definition of substituted work
18 item, also, and we worked on some wording to make that
19 more clear so the intent is there.

20 MS. MARTINCIC: If you look through the SAF Rule
21 that went to GURC, the agency listed out concerns that had
22 been raised throughout the process, and it clearly states
23 in the rule, ADEQ gives their analysis and then there is a
24 lot of new changes, so I think Phil's correct in the sense
25 that the agency feels that they're not going to change

1 these issues, but they are issues that were raised by the
2 subcommittee over the past two years on this rule and
3 there is still an issue, so --

4 CHAIRPERSON CLEMENT: But, Mr. McNeely, you are
5 saying that of this list of issues called the dated draft
6 list of issues that I just passed out, that we are
7 incorrect about the definition of substituted work item,
8 that in fact this definition was changed to make it more
9 clear?

10 MR. MC NEELY: I'm not sure if we changed the
11 definition, but we did change wording in the rule where
12 this is defined to make it more clear that the definition
13 complies with the statute. Rather than use the term, we
14 just said in compliance, and I can't remember, I think it
15 was 1054, either 1, 2 or 3. We referred to the statute,
16 so it's very clear complying with the statute, because the
17 issue was, it's in contradiction of the statute, so we
18 cleared that up.

19 MS. MARTINCIC: I think the concern we discussed
20 in the subcommittee and the concern is that they tightened
21 the definition, which actually makes it even less
22 substituted, and that was the concern of the stakeholders
23 that were at the Financial Subcommittee meeting, so that's
24 why we needed it to remain on our list of issues.

25 MR. MC NEELY: Okay.

1 CHAIRPERSON CLEMENT: Are there any other ones
2 that you'd like to comment on, Mr. McNeely, on the list?
3 I mean, in terms of -- I don't expect you to -- all I'm
4 asking for is, you've changed the rule, these are the
5 lists of issues that we think have not been changed, so if
6 we are wrong, let us know.

7 MR. MC NEELY: From your direct assignment,
8 absolutely, we changed that, Inappropriate Seal
9 Requirements, we absolutely changed that definition.
10 Definition, we thought we addressed that adequately, too,
11 and the rest, you are right, we didn't change.

12 And Confidentiality, that's statute. We'll keep
13 things as confidential as we can according to the state
14 law.

15 Certification language, I thought we addressed
16 that back in August when we all voted on the language and
17 we made modifications to that. So I'm not sure. These
18 things keep coming back. So, yeah, I can't argue the
19 whole rule here, but my opinion is we've already, you
20 know, given this letter to GURC, your original letter,
21 we've already given it to Steve Owens, the Director.

22 MS. MARTINCIC: The original letter did not go to
23 GURC.

24 MR. MC NEELY: It did go to GURC because I sent
25 it to GURC. That's part of the formal rule process. They

1 have that letter, so I'm not sure --

2 MS. MARTINCIC: Phil, Phil. So -- because when I
3 got the disk from the agency on the rule, none of the
4 original comments from any of the stakeholders were
5 included in that. I was assuming that that disk was the
6 rule package that was sent to GURC. So, are there
7 additional items that were sent to GURC that are not part
8 of the disk that you are handing out?

9 MR. MC NEELY: Yes. All of the comments we
10 received, we didn't have electronic copies, we made hard
11 copies. We gave all the comments to GURC's staff so they
12 could read the comments themselves.

13 And in our preamble, we summarized it, because a
14 lot of the comments were very, very similar, so in the
15 preamble we summarized all the comments, so they don't say
16 Policy Commission comment.

17 MS. MARTINCIC: I saw the summary of comments but
18 I was not sure that GURC actually had received the
19 original comments from the stakeholders throughout the
20 process.

21 MR. MC NEELY: No. That's part of the process.
22 They have every set of comments we've ever received, GURC
23 staff has, and they are reviewing those to make sure our
24 preamble or responsive summary answers those comments
25 adequately, and that's why it got pushed off to March 10th

1 because they are going through those comments to make sure
2 they addressed them all adequately in their mind.

3 So, I would just say, you know, writing another
4 letter, they have a letter and the issues are the same
5 except for those three issues, and that's --

6 MS. MARTINCIC: Yeah, I think I understand what
7 you are saying, Phil, and I think that the Financial
8 Subcommittee felt that, you know, because it's been such a
9 long process and there are still this many outstanding
10 issues, the Financial Subcommittee felt strongly that it
11 would be nice for the Commission to reiterate that these
12 are still concerns that have not been addressed in the
13 rule, the formal rule that was sent to GURC.

14 So that's the mindset behind the Financial
15 Subcommittee. You know, Phil's right, they changed the
16 direct assignment of benefits, they changed the
17 Inappropriate Bill Requirements that we had raised as
18 issues, but the Financial Subcommittee felt there were
19 really still a number of outstanding issues that are
20 problematic to owner/operators, volunteers, and basically
21 anybody involved in the program and feel that it's serious
22 enough that it warrants reiterating the issues are still
23 issues, because, you know, we're in 2006 now, and the last
24 communication was September 2005, so --

25 MS. HUDDLESTON: Which is really only a few

1 months ago and -- I'm sorry. Go ahead.

2 CHAIRPERSON CLEMENT: One thing that I'm a little
3 bit concerned about is where we are in the process. Since
4 we don't know what they're going to decide and what
5 they're going to change or approve at this stage, are we a
6 little premature in sending another comment letter to GURC
7 when we don't have the actual proposed rule that they are
8 going to publish.

9 MS. MARTINCIC: Well, it's my understanding GURC
10 can't change the substance of the rule. I thought they
11 could only change technical issues that are in the rule,
12 make suggestions to DEQ, and then DEQ would actually have
13 to decide whether or not to change the rule at that point.

14 MR. MC NEELY: What GURC can do is, if there is a
15 statutory conflict to our rule, they can say these rules
16 are illegal, and they send it back saying we can't approve
17 them.

18 MS. MARTINCIC: Right.

19 MR. MC NEELY: They can do that.

20 MS. MARTINCIC: They can't tell you -- they are
21 not going to change the substance of your rule based on
22 comments from the regulated community.

23 MR. MC NEELY: We have to change the rule. They
24 can say, we're not approving the rule unless you address
25 this statutory conflict.

1 MS. MARTINCIC: That's why we feel this
2 communication is important.

3 CHAIRPERSON CLEMENT: Any other questions for
4 Andrea? I mean, my concern is that we don't know what
5 it's going to look like, and we send out another set of
6 comments and we may be, you know, missing the target.

7 MS. MARTINCIC: Well, I guess my thought on it,
8 and, you know, I think this is how the Financial
9 Subcommittee was looking at it is that, you know, GURC
10 received the copy of the rule. If we comment that these
11 are still issues, you know, in a communication, it's going
12 to be dated, and you can reference that it's the rule that
13 was sent to GURC, I really question how many changes GURC
14 is really going to make to the rule, because, as Phil
15 said, I think they really only have the authority to say
16 whether or not there is statutory conflict and, you know,
17 send it back for those changes to DEQ.

18 So, I don't think that GURC is going to rewrite
19 the rule. I don't think they have the authority to
20 rewrite the rule. They can either tell DEQ they have
21 problems, and then DEQ has to make a decision or move it
22 through the process.

23 CHAIRPERSON CLEMENT: Ms. Campbell?

24 MS. CAMPBELL: I think my concern is, though, is
25 while GURC doesn't change the rule in the sense that they

1 don't rewrite it, they do look at the comments that are
2 provided, and they will look at the comments that the
3 Commission provided in their September 29th letter line by
4 line by line. And it takes those people time to go back
5 and look at the statutory or the rule citation that you've
6 listed in this letter.

7 My concern is that if we send them another
8 letter, they are going to think that these are new, and
9 they are going to go back and re-look at them all over
10 again, which may in fact delay this process even more.

11 I think Phil's already said that they're -- I
12 don't know if he actually got an indication from GURC to
13 this effect, but that the rule has been delayed because in
14 fact they are looking at all of these individual citations
15 and comments put in by the stakeholders, as they should.
16 But if we are just reiterating what we've already put in
17 writing to them, I would fear that we're going to delay
18 this process more and at a point in time, I think, Madam
19 Chair, you've already identified might not be the right
20 point in time.

21 CHAIRPERSON CLEMENT: Ms. Huddleston, did you
22 have another comment?

23 MS. HUDDLESTON: No.

24 CHAIRPERSON CLEMENT: Okay.

25 MS. MARTINCIC: Well, it doesn't sound like

1 anyone wants to communicate on this rule any more, then,
2 and they're not concerned about the issue, but I guess we
3 will leave it up to the individual owner/operators that
4 are affected by the rule to work the process, then.

5 CHAIRPERSON CLEMENT: I don't think that we're
6 there yet, Andrea, so let's hold off. We still have more
7 discussion. Mr. Smith?

8 MR. SMITH: I don't think it's that we don't want
9 to comment on the rule. I think we need to hear back from
10 GURC so we don't stick our foot in our mouth, so we don't
11 restate what we've already restated, and hopefully GURC
12 will have something out that we can review within the next
13 two to three weeks. There will be another Financial
14 Subcommittee. There will be another Policy Commission
15 meeting and, if needed, we can have a Special Policy
16 Commission meeting to meet the April time frame that GURC
17 would hear these if they don't get their written comments
18 back to us until a week or two before the meeting.

19 CHAIRPERSON CLEMENT: Mr. Gill?

20 MR. GILL: I guess I don't understand the process
21 real well. What is the -- I mean, would we have another
22 opportunity to review and comment? I thought once it went
23 to GURC, unless it was sent back saying, do it over again,
24 then that was it.

25 MR. MC NEELY: I think the process would be, once

1 it gets in the April 4th agenda, you have to show up at
2 the hearing and testify if you want to oppose it or if you
3 want to make comments to it. It's out of the formal
4 written thing, then you have always the opportunity to
5 make a comment at the GURC hearing on April 4th.

6 MR. GILL: The Commission wouldn't have another
7 opportunity to look at it. That's what I don't
8 understand.

9 MR. MC NEELY: No. You have an opportunity to
10 look. On March 15th, all of the corrections have to be
11 approved by GURC. So by March 15th, we should have --
12 whatever changes we're going to make should be done to the
13 rule. At that point, we can do the same thing again, give
14 you a CD and you can review whatever changes there are,
15 but there is no opportunity to write more letters. You
16 could, but I think that the process is April 4th to show
17 up and you testify at GURC.

18 And my point is, all these -- I mean, all the
19 comments are still in -- from April 29th in your minds or
20 a lot of your minds, they are still valid, so they have it
21 and they're reviewing it.

22 CHAIRPERSON CLEMENT: Ms. Gaylord?

23 MS. GAYLORD: During the lengthy meeting that we
24 had to discuss the original letter, there was not
25 unanimity on every point. And in fact, DEQ has addressed

1 the three issues that I had. I did not agree with some of
2 the issues that are in the current list and were in the
3 original letter, and so I would, first of all, echo the
4 concern that we not dilute the impact of the comments that
5 have by simply repeating comments that are already on
6 record.

7 But I would also say that it might be a better
8 use of our time to look at the proposed GURC rule and
9 decide whether the Commission, again, has concerns about
10 remaining issues and wants to address those in testimony
11 before the Commission. But I would suggest that I would
12 want to discuss the actual issues and find out if there
13 are some issues on this list where the Policy Commission
14 does not, as a group, decide to express a concern.

15 CHAIRPERSON CLEMENT: Wow. Would you suggest
16 that we try to do that today? Is that what you're --

17 MS. GAYLORD: No. I'm sorry. I'm echoing
18 everyone's concern that it might be premature to make a
19 letter of concern today. It appears not to add anything
20 to the process if our original comments are already before
21 the Commission.

22 So I guess I'm echoing what I think I've heard so
23 far, which is, I'd like to see GURC's version of the rule
24 and then decide whether additional action by the
25 Commission is necessary to weigh in on particular issues

1 that remain a concern for the Commission.

2 CHAIRPERSON CLEMENT: That's clear. Thank you.

3 Any other comments or discussion we want to have
4 on this as a Commission, because there is a person in the
5 public here that really wants to talk to this point, and I
6 will take a public comment because it's an important
7 issue, but before I do that, is there any other comments
8 or ideas on the table?

9 Mr. Kelly, you had a comment.

10 MR. KELLY: Thank you, Madam Chairman. Dan Kelly
11 with Tierra Dynamics.

12 I had about an hour and 15-minute conversation
13 with Scott Cooley yesterday, who is the GURC attorney who
14 is reviewing this rule package.

15 Phil, the way I understand it, what GURC has
16 asked from the department is two things, a point-by-point
17 response to each public comment received rather than the
18 grouping that was done, so you said, ten people addressed
19 this issue, so we're just going to call this issue out and
20 address this issue, not ten times, repeat the same thing.
21 They've asked you to go back and readdress point by point
22 each public comment?

23 MR. MC NEELY: That's not exactly accurate, but
24 go on.

25 MR. KELLY: And this is important, Madam Chair,

1 maybe I could understand, is the department not going to
2 respond to each public comment received?

3 MR. MC NEELY: I'm not going to be interrogated
4 by Dan, but what Scott Cooley said, he wants to make sure
5 that the groupings are accurate, not to go back and repeat
6 something a hundred times. He wants to make sure that we
7 group things together, that they all had the same comment
8 and they weren't a twist on the same comment, and so
9 that's what we're looking at. But he didn't say we have
10 to rewrite, because that's just ridiculous. Some of these
11 rule packages you can have a thousand pages, a lot of
12 comments come in the same, so that was the comment.

13 MR. KELLY: And the other issue was to re-address
14 the economic impact statement that the department had
15 prepared. So, where I'm going with that is that GURC
16 hasn't asked the department to change any text in the rule
17 itself. And, Phil, is the department planning to change
18 any text in the rule itself with the March 15th submittal
19 or just the other issues that GURC has questioned?

20 MR. MC NEELY: See, Dan, this is premature
21 conversation. We've got nothing in writing from GURC.

22 MR. KELLY: Okay.

23 MR. MC NEELY: We had verbal conversations, and
24 that's all we've had. We've asked specifically what do
25 you want us to do. We are looking at the comments to make

1 sure they were grouped properly. We're looking at that
2 economic impact statement, but we have nothing in writing
3 from that.

4 MR. KELLY: Okay, then, Madam Chair, I guess what
5 we are hearing from GURC is different than the
6 department's interpretation, which moots all of the other
7 comments I was going to make, except for this point, Scott
8 was very explicit in pointing out that anybody, including
9 this Commission, can make comment directly to GURC in
10 writing before the April 4th hearing date.

11 So, you will have, as a body, another chance to
12 take a bite of the apple if you so choose, and given what
13 Phil is saying about, we don't know what we are going to
14 do because we haven't seen anything in writing, then maybe
15 it is premature because maybe we are going to see
16 different rule text on March 15th.

17 And I can give you the statutory and rule
18 citation that gives anybody and everybody the authority to
19 write directly to GURC, GURC, this is my problem.

20 CHAIRPERSON CLEMENT: Thank you.

21 MS. MARTINCIC: Thank you. Gail.

22 CHAIRPERSON CLEMENT: I think Mr. McNeely had one
23 response and then, Andrea, we will go back.

24 MR. MC NEELY: GURC did not say -- I don't think
25 they've done their full review yet. They may ask to

1 change some of the rule text. I don't know. We are
2 looking at an economic impact statement, we always have
3 comments.

4 So, I think your conversation with Scott was
5 accurate, but your interpretation about putting every
6 comment out there would be ridiculous if it's the same
7 comment. But we just got to make sure they are all the
8 same comment.

9 MR. KELLY: I wasn't trying to interrogate you or
10 bait you, I was trying to get the lay of the land where
11 you were so we could decide as the public body what we do.

12 MR. MC NEELY: Okay.

13 CHAIRPERSON CLEMENT: Thank you. And I don't
14 usually take things out of order, but this is such a
15 important issue.

16 Ms. Martincic? Andrea?

17 MS. MARTINCIC: Yeah. I guess, you know, we
18 waited to hold this subcommittee meeting until the 17th
19 because that was when the rule was supposed to get back in
20 the first place. I mean, I just -- I guess I'm worried to
21 schedule another Financial Subcommittee meeting, not have
22 any Policy Commission members there, have stakeholders
23 there that put in hours of time going over this but
24 then -- I just don't know. I'm sort of hearing that the
25 Commission is not necessarily interested in continuing on

1 with the rule and the process right now, and that it
2 should be left up to the individual stakeholders.

3 CHAIRPERSON CLEMENT: I certainly did not hear
4 that. What I heard was that the GURC already has our
5 comments that are dated September 29th, that they are in
6 the middle of a process that could result in changes to
7 the rule, and that we do not have the final version, and
8 that it may be premature to interject another round of
9 written comments at this stage. I have not heard anyone
10 say we do not want to address this issue, we do not want
11 to address this issue in writing.

12 MS. MARTINCIC: I'm worried about timing. If we
13 don't get the copy of the rule from GURC until the end of
14 March, the Commission meeting is on the 22nd, it could
15 very well be that we don't even have the rule back from
16 GURC by then, then the hearing is two weeks after that or
17 a week after that, I think.

18 CHAIRPERSON CLEMENT: That's a very valid point.

19 MS. MARTINCIC: I find it very odd. I dealt with
20 rules for other agencies, and I've never heard of them
21 returning a rule that was different than the rule that was
22 given to them for stakeholders, and how are stakeholders
23 supposed to analyze the rule and make comments in a proper
24 time period, have two weeks before public hearing and
25 potentially two substantive changes. I don't think GURC

1 can make substantive changes to the rule.

2 MR. MC NEELY: No. If GURC -- and they are not
3 going to make changes, they are going to recommend changes
4 to us.

5 MS. MARTINCIC: Right. And it's going to be
6 DEQ's decision whether or not you're going to do anything
7 about them.

8 MR. MC NEELY: Andrea, let me finish my sentence.
9 They are not going to -- they will ask us to make changes
10 if they think it's a statutory conflict or they think it's
11 appropriate. If it's substantive, we have to repropose
12 the rule, so, you are not going to have substantive
13 changes to that rule, and if they are not substantive, I
14 guess you could argue, but there will not be substantive
15 changes coming forward on April 4th, because we would have
16 to re-propose.

17 MS. MARTINCIC: You know, there aren't going to
18 be substantive changes. The Financial Subcommittee
19 reviewed the rule again, but if we need to meet again, we
20 will meet again, and I would urge Commission members to
21 attend so you can go over the rule again, I guess, and
22 refresh your mind on the issues and determine whether
23 they're issues or not for each individual Commission
24 member.

25 CHAIRPERSON CLEMENT: Mr. Smith?

1 MR. SMITH: Didn't I hear that ADEQ has to have
2 their comments back to GURC's written comments by the 15th
3 of March? So GURC's written comments will be out between
4 now and sometime, so you have a reasonable time to respond
5 by the March 15th deadline, so we will see the new rule,
6 we will see GURC's comments by or before March 15th. Is
7 that a correct statement?

8 MR. MC NEELY: I think what's correct is by March
9 15th we have to have our final rule packet into GURC, and
10 I think GURC has to have it approved.

11 MR. SMITH: Based on their comments.

12 MR. MC NEELY: Based on their comments. And I'm
13 not real clear on GURC's comments. I'm expecting a memo,
14 but I'm not real sure they're going to give me a formal
15 memo or not. That's the thing. I'm sort of waiting for
16 them and trying to get something from them because I would
17 like to know exactly what they want us to change, rather
18 than doing this word of mouth thing back and forth, so we
19 will see where that goes.

20 CHAIRPERSON CLEMENT: Mr. Gill?

21 MR. GILL: But Myron's question is, will we get,
22 the Commission and the subcommittee members, and public
23 have something to look at around March 14th?

24 MR. MC NEELY: I will do the same thing. I will
25 make it available to you as soon as it's done and approved

1 by GURC.

2 CHAIRPERSON CLEMENT: Okay.

3 MS. MARTINCIC: So, basically we will need to
4 change the Financial Subcommittee again this month, change
5 it from the first week of March to late March, just like
6 we did in February, because I think that was the whole
7 point of changing it last month, if I remember correctly,
8 we were supposed to have the final version. We will
9 change the date, and I guess I will work with Hal to try
10 to find a new date, and we will go from there.

11 CHAIRPERSON CLEMENT: And ADEQ will make
12 available as soon as it's final, what is going to be
13 proposed, and could you commit to, because I don't think
14 anybody can download this stuff.

15 MR. MC NEELY: We will just do the disk again.

16 CHAIRPERSON CLEMENT: Let us know when they are
17 available, or something.

18 MR. MC NEELY: We will copy them and put them in
19 the foyer.

20 CHAIRPERSON CLEMENT: Oh, I don't know. Mr.
21 Findley, could you mail his to him?

22 MR. FINDLEY: No. I'm all right.

23 CHAIRPERSON CLEMENT: I'm wrong. For some reason
24 I thought you were in Tucson. Sorry.

25 Andrea, if you want to propose a motion we can,

1 but I just don't think we have a consensus here.

2 MS. MARTINCIC: Well, you know, it doesn't
3 surprise me. I think Hal was the only Commission member
4 that came to the meeting. Okay. All right.

5 CHAIRPERSON CLEMENT: Thank you.

6 Anything else from the Financial Subcommittee?

7 Thank you, Andrea.

8 We'll move on to the Technical Subcommittee
9 update.

10 MR. GILL: At the subcommittee meeting, we
11 continued with the process that we've been going through
12 where we're going through the outline that I had provided
13 a few meetings ago for a remedial program, and I didn't
14 send out -- I did make the changes to the permitting
15 matrix that were suggested in the last Policy Commission
16 meeting. I put down the date, any new data that's sent,
17 and I also put down the date down at the bottom showing
18 that it's a dated document, and any time anyone has made
19 anything that is new, the date changes, and also that
20 these were not -- you know, these were not directed from
21 the state or from the different cities and counties, these
22 were just based on information from consultants, so the
23 costs in particular would not be derived as actual costs,
24 they were ranges. But I didn't make copies and send them
25 out to everybody because I was afraid I would be drowned

1 and quartered. No, actually I forgot.

2 But we are moving forward with the matrix and we
3 get more information every day, and so hopefully we will
4 be able to populate that, and then DEQ will provide on
5 their column what kind of backup they need for these
6 particular types of issues, and then we'll put it on the
7 bulletin.

8 We had discussions on, again, further along in
9 the remedial process, we were looking at the start-up and
10 O&M, Operation and Maintenance Unit. We've had real good
11 discussions, real good turnout by the public and DEQ. I
12 think there was a couple of SAF people, as well as Joe
13 there, so we had a real good turnout on both sides and
14 some really good discussions. And now we are just hoping
15 that we can get Joe's writing down, if he brings a laptop,
16 and he's putting down the comments and the issues.

17 And, again, they need to provide what
18 requirements they may have, or for backup, or whatever it
19 happens to be, and we will have another meeting the second
20 Wednesday of next month and we're nearing the end of that
21 outline. We're getting down to the closure activities.

22 CHAIRPERSON CLEMENT: Making progress and getting
23 consensus and getting information out, and that's exactly
24 our role. Very good.

25 Are there any other major topics that you see

1 coming up for the Technical Subcommittee? I know you are
2 working on these issues, the remediation process.

3 MR. GILL: No, because that's what -- you know,
4 that was my main agenda was working through this outline
5 that I had been provided, and anything that come out of
6 it, such as the matrix. Nothing has come from the
7 Commission, and there is no new -- there may be some -- I
8 don't know if there is going to be any more discussions on
9 the Soil Rule or something like that.

10 CHAIRPERSON CLEMENT: Mr. McNeely?

11 MR. MC NEELY: Yeah. After the Soil Rule gets
12 proposed and hopefully the SAF Rules off on play, the next
13 thing for the UST program is monitoring the Natural
14 Attenuation Rule. I would like to -- we have authority
15 since '97 or '98 to close sites exceeding water quality
16 standards. I would like to put the rule in. There is a
17 lot of sites that have one well, barely above water
18 quality standards. I'd like to find a process. Senate
19 Bill 1306 says, once you get the source removed, you are
20 supposed to get a no further action, and then monitor
21 natural attenuation, put money aside in the fund. I'd
22 like to work that out with the Policy Commission and the
23 stakeholders.

24 And it will be a lot more leverage for the
25 cities, because I would like to find a way of closing by

1 exceeding water quality standards, as long as you get to
2 show that they are going reach water quality standards in
3 a certain amount of time based on evidence of natural
4 attenuation occurring.

5 And I would like to work with DWR to have proper
6 notice for people drilling and have money set aside, but
7 that's going to be a little more complex, but I think it's
8 something that we really should pursue and we see how it
9 shakes out.

10 CHAIRPERSON CLEMENT: That's going to be a real
11 challenge, and that's going to be a really big
12 administrative session, technical, you know, writing
13 exercise. I mean that's going to be interesting.

14 MR. MC NEELY: I'm looking forward to it.

15 MR. GILL: That's all I have.

16 CHAIRPERSON CLEMENT: Well, thank you so much,
17 Hal. You are doing a lot of good work for us.

18 I want to just switch these next two agenda items
19 very quickly. The last time we had public comment about
20 rescheduling our meetings to begin at 10 a.m. versus
21 9 a.m., and I just wondered if anybody had an opinion or
22 if -- I personally want to say what I think. I'd like to
23 continue to keep everything at 9 a.m. just because it's in
24 everybody's calendars. We know when it is we start.

25 It's No. 10, discussion of agenda items and

1 schedule for next meeting. Is that sufficient?

2 MS. HUDDLESTON: I just didn't see it.

3 CHAIRPERSON CLEMENT: I just switched the nine
4 and ten. So I'm open for discussion if anybody wants to
5 change the start for meetings or the scheduling. Mr.
6 Gill?

7 MR. GILL: I've had the same request for my
8 subcommittee, because a lot of people have a hard time
9 getting there by nine in the traffic. And I don't have
10 any problem doing it. The thing is, I never know when my
11 meetings are going to go long. We're already through
12 10:15, but we never know when it's going to be -- like I
13 said, I guess if we have a discussion, such as last
14 meeting, we know it's going to be, I guess we can say we
15 will have the meeting at nine, let's make it nine, but,
16 you know, I just -- most of my meetings take the entire
17 three hours so, you know, to be able to move forward, I
18 understand the problem with traffic because I'm way out in
19 the hinderlands.

20 MS. CAMPBELL: And I'm beyond the hinderlands
21 from you.

22 MR. GILL: I understand. I guess if we can
23 figure out when we are going to have a long meeting.

24 CHAIRPERSON CLEMENT: And the good thing about
25 having a standard date and time and date of the month and

1 time, we all know when it is.

2 Mr. Johnson had a comment.

3 MR. JOHNSON: Well, I just think for scheduling
4 purposes, scheduling a room, it's difficult because we
5 have to schedule so far in advance. I think it's easier
6 to go ahead and schedule then for nine. If you decide to
7 schedule them at ten, at least we have the room, but to go
8 the reverse is very difficult.

9 CHAIRPERSON CLEMENT: Is there a -- any drive
10 that makes it -- is anybody interested in having it start
11 later?

12 MS. CAMPBELL: Can I ask a question?
13 Unfortunately, I was not here at the -- I think it was the
14 September meeting where you formulated the letter with the
15 comments, which I assume, from what I understood, was a
16 long meeting. How long was that meeting?

17 CHAIRPERSON CLEMENT: I think we took pretty
18 close to the full three hours at that meeting, and I was
19 pretty much pushing it, frankly.

20 MS. CAMPBELL: So you were pushing noon at that
21 time?

22 CHAIRPERSON CLEMENT: Now, we've been, I think,
23 very efficient when we don't have tough agenda items like
24 that or rule packages of that complexity, but I don't
25 know. I mean, I don't have a strong preference. I just

1 like keeping things consistent and everybody has it on the
2 calendar, so I don't think that --

3 Mr. Smith?

4 MR. SMITH: Is there a majority out there that
5 want it at ten, or just -- we have one comment, not to
6 belittle that one comment?

7 CHAIRPERSON CLEMENT: No. I think it was a
8 really reasonable comment. I don't know if there is a
9 majority out there. We had one comment, and I know those
10 of us who drive in from far away, it is easier to get into
11 town at 10 a.m. than 9 a.m. I don't mind taking that
12 extra 10, 15 minutes built into that drive time to get
13 here at nine.

14 Ms. Gaylord?

15 MS. GAYLORD: I will attend whatever time you
16 want to have it. One consideration is, if you move it to
17 ten, it's more often it's going to bump into the lunch
18 hour, and it does make it difficult to make lunch
19 meetings, so it does more often than not, you know,
20 eliminate that useful middle section of the day. But I'm
21 flexible and will attend whatever time you want to have
22 it.

23 CHAIRPERSON CLEMENT: So, what do people want to
24 do?

25 MR. SMITH: Keep it at nine.

1 CHAIRPERSON CLEMENT: Is there anybody who
2 disagrees, or would like to propose something different?

3 Okay. So we will continue to hold our meetings
4 at 9 a.m., and I apologize to folks that have to come a
5 long way, it is more time-consuming, but I think the
6 Commission, we have a consensus on that.

7 Okay. And our next agenda, just to get this off
8 the list is, our next meeting is going to be the 22nd of
9 March here -- no. It's in the ICA hearing room; is that
10 correct? It's the ICA hearing room A, and at 800 West
11 Washington.

12 Now we can go back to the other agenda item.

13 The summary of meeting action items.

14 MR. FINDLEY: Could you clarify that last thing?
15 What's the ICA?

16 CHAIRPERSON CLEMENT: Industrial Commission.
17 What's the A for, Industrial Commission Administration?

18 MR. SMITH: It's the next building to the east.

19 CHAIRPERSON CLEMENT: It's 800, so it will be
20 that way.

21 MR. FINDLEY: I will bring my compass.

22 CHAIRPERSON CLEMENT: It appears the DEQ had a
23 little bit of a problem scheduling consistent date and
24 times, so they've had to move the meetings, and there was
25 a new -- our final meeting dates and times, you put a

1 handout out, so there is handouts in the back and it was
2 in the package so we all have that.

3 MR. FINDLEY: So that's a single asterisk?

4 CHAIRPERSON CLEMENT: Yeah.

5 As far as action items, let me just see what I
6 have here.

7 Mr. McNeely, with or without an EPA Region 9, is
8 going to provide a UST legislation, federal legislation
9 presentation at the next meeting.

10 Mr. Gill is going to see if he can figure out how
11 you can acquire an Excel spreadsheet 1997 from, I guess,
12 the software, Microsoft directly.

13 I have challenged the Policy Commission to
14 consider participating more directly and actively in the
15 subcommittees, whether they want to be official members or
16 not. And they can respond next time on that.

17 Mr. McNeely and DEQ will make a disk of the Rule,
18 revised SAF Rule in its, quote, near-to-final version,
19 coming out of GURC, or being presented to GURC, I should
20 say.

21 Mr. Gill is going to get out his permit issues
22 list matrix again regarding the remedial process.

23 Mr. Drosendahl and I are going to work on the
24 annual report.

25 MR. DROSENDAHL: Me?

1 CHAIRPERSON CLEMENT: You know -- what I need
2 from DEQ are your numbers, so when you give me those
3 numbers then I can work with that.

4 Those are the agenda items or action items I
5 captured. Did anybody else get anything on the list?
6 Okay.

7 MR. FINDLEY: Could I ask a question?

8 CHAIRPERSON CLEMENT: Yes, sir.

9 MR. FINDLEY: I understand we can't discuss new
10 items at this point. How do we propose something to be
11 discussed at the next meeting?

12 CHAIRPERSON CLEMENT: We can -- the next thing we
13 will do in this is, you can give me the agenda items now,
14 or if it doesn't come to mind during the previous Policy
15 Commission, you can always e-mail me, and I'm not someone
16 that is trying to filter action items. If they are issues
17 that a Policy Commission member thinks is important enough
18 to put on an agenda, unless it's something extremely
19 radical, we will put it on the agenda.

20 MR. FINDLEY: I would just like to -- maybe Mr.
21 McNeely can address this at some point. I've been talking
22 with people about the new E-85 fuel, the 85 percent,
23 ethanol, 15 percent petroleum product, and I just would
24 like to know if there is going to be any impact on the
25 Underground Storage Tank. I assume this will be stored in

1 underground tanks, although one comment I had, although
2 it's being stored in above-ground tanks in some places,
3 because it is in use in Arizona at this point and being
4 stored in Arizona, and I just wondered if there would be
5 an impact.

6 CHAIRPERSON CLEMENT: So we could add that. Mr.
7 McNeely, would you be prepared to discuss that or have
8 some information?

9 MR. MC NEELY: I will look into it. I don't
10 personally know. I don't know personally. I will have to
11 see if Ron Kern, the inspectors, who know about these
12 things, if that would impact.

13 CHAIRPERSON CLEMENT: We can put that on the next
14 agenda.

15 Are there any other issues or ideas that people
16 want included in the next agenda? We have a pretty
17 standard form for our agendas that, I think those issues
18 that are continuing, we will keep on. Okay.

19 I think now I'm at the call to the public. I
20 think I got them all. Okay. General call to the public.

21 Mr. Vannais.

22 MR. VANNAIS: Thank you Leon Vannais, Tierra
23 Dynamics.

24 I've got two issues I would like to discuss very
25 quickly. First of all is the LUST confirmation. I

1 believe two Policy Commission meetings ago, the Department
2 indicated that they would return some comments as to LUST
3 confirmation and how that occurs and when it's confirmed
4 and talking about the July deadline, and I don't know if
5 that's ever been responded to. As we're approaching July,
6 it gets more and more important that everybody gets on the
7 same page with all of this.

8 Secondly, I was wondering if the numbers -- and
9 this is kind of related -- the numbers reported as new
10 LUSTs by the DEQ, are those new LUSTs that have been
11 recognized or new releases that have been reported but not
12 yet recognized, as there is a delay between reporting a
13 release and getting any kind of a response or
14 acknowledgement that the release is actually within the
15 UST jurisdiction.

16 So, if this means one LUST was granted, we don't
17 know if 30 LUSTs were reported. So, perhaps the Policy
18 Commission would be interested in requesting that
19 information be provided by DEQ.

20 CHAIRPERSON CLEMENT: That's a good point.

21 MR. MC NEELY: Well, it was not -- it wasn't two
22 Policy Commissions ago, it was last Policy Commission that
23 I actually brought up that I wanted to see some outreach.
24 We are still working on a postcard, and we are trying to
25 do that internally to send out.

1 We have current rules that show what a confirmed
2 release is. We just wanted to make it very clear to tell
3 the owner/operators, volunteers, and probably consultants
4 and anybody on the stakeholders, that this deadline's
5 coming up, and maybe try to make it very clear and point
6 out the actual rule. We are not changing anything. It's
7 just outreach.

8 And then the confirmed releases, what's actually
9 -- there is a whole bunch of suspected releases that we
10 get. A lot of those are alarms going off and those never
11 turn into confirmed releases, so we ask for additional
12 information. Inventory control, that can be inspected.
13 The confirmed releases, that's actually samples that is
14 tied to a tank, and I don't know the answer to that, if
15 it's only one that's given, or more than one, I don't
16 know.

17 MR. VANNAIS: Let me address, those are the
18 things that need to be recognized, because if I have a
19 suspected release that is later confirmed, if I suspect my
20 release in June but it's not considered to be confirmed
21 until July, is that going to be an eligible SAF release?
22 There is a whole lot of things that are going to change
23 when July 1st hits. That's just one of the things.

24 The second thing is, you've got a site, you are
25 SAF eligible for your release. As you investigate your

1 release, you determine you have another release, so now
2 you got two releases on your site. One is SAF eligible,
3 one is not. You may not have insurance coverage for that
4 previous release, especially if the tank system had been
5 removed or not, operational. Now their financial
6 responsibility mechanism goes away for half of their work,
7 and I think some people out there are going to be looking
8 at, I've investigated my site, characterized, don't come
9 back to me two years later and say I have another release
10 that's confirmed after the July 1st deadline and take away
11 50 percent of my SAF rights.

12 So, these are all things that I'm thinking about
13 for my clients' sake as we are getting into this
14 non-eligible releases, so that owner/operators -- so there
15 are still problems that need to be addressed.

16 MR. MC NEELY: One comment. Suspected release,
17 it has to be a confirmed release before June 30th at
18 5 o'clock. Confirmed release is identified by the owner.
19 The owner submits in a confirmed release, then you meet
20 the deadline. We may not -- eventually may not give you a
21 LUST number for that if it turns out that it was -- we
22 have to tie it to the system, and things like that. We
23 are working at it.

24 The suspected releases reported do not count, so
25 it has to be a confirmed release. If have you an

1 inventory problem on June 30th, you better get a sample
2 out there and do it quickly. That's the outreach I want
3 to do now. Everyone needs to be aware of that. It's
4 different in rule. Suspected is different from confirmed.

5 MR. VANNAIS: And I don't mean to beat a dead
6 horse with this, but the problem is, you tell me this
7 piece of sample that you took directly went to the UST
8 system, and until you can prove that in some manner, then
9 it's suspected.

10 Then if you do additional work afterwards, after
11 July 1st, and you subsequently say, yeah, I proved it, up
12 until that point it's a suspected release, but it's always
13 been a confirmed release, it just hasn't been linked. So
14 these are the issues. I think there is a discussion that
15 needs to occur.

16 CHAIRPERSON CLEMENT: I think that's -- release
17 is a significant point, and perhaps at the next meeting we
18 can have an agenda item, or even at the next Technical
19 Subcommittee meeting, we can have an agenda item on this
20 and perhaps someone could send Mr. Gill the list of
21 questions that you have so that we can be better prepared,
22 but I do think we need to set it as an agenda item. We
23 shouldn't be going any further than we are right now on
24 this.

25 MR. MC NEELY: And I agree with you. That's why

1 I did bring it up last month. Internally, we talked about
2 this, okay, what if, what if scenarios, and I want
3 everyone to be very familiar with the way we're thinking
4 so they can understand what they need to do to get their
5 confirmed releases.

6 CHAIRPERSON CLEMENT: Would it be the
7 Commission's intent to have this more fully fleshed out in
8 a Technical Subcommittee and presented to the Commission,
9 or do you want to flesh this out in the actual next Policy
10 Commission meeting? Does everyone have a preference or an
11 opinion? Mr. Smith?

12 MR. SMITH: I think it ought to be fleshed out in
13 the Technical Subcommittee. That's why we have one. It
14 is a technical issue.

15 CHAIRPERSON CLEMENT: Okay. Mr. Gill, would you
16 be willing to make that your number one agenda? I think
17 it's so timely, your number one agenda item in the next
18 Technical Subcommittee.

19 Then when is the next Technical Subcommittee? I
20 forgot.

21 MR. GILL: It's the second Wednesday of the
22 month. March 8th.

23 CHAIRPERSON CLEMENT: March 8th. That's a really
24 good point.

25 And we have one more public comment from Mr.

1 Vannais.

2 MR. VANNAIS: Thank you. The other issue I want
3 to bring up is, as we've seen determinations coming out
4 from the department, historically there have been four
5 entities that get SAF Funds, owner/operators responsible
6 for -- or responsible for 10 percent co-payment
7 obligation. Volunteers, which are persons that own the
8 property, who have an interest in the property, didn't
9 cause a release, they used to be 100 percent, now they are
10 90 percent covered by the SAF.

11 You have political subdivisions that are -- that
12 can do corrective action work and they get 100 percent
13 reimbursement.

14 There is another portion that talks about
15 owner/operators that are responding to a release on their
16 property that is not from them. In other words, they're
17 doing -- they're cleaning up their release, and in the
18 process, there may be another release there that they're
19 not responsible for, and they get SAF coverage for
20 100 percent of the work, for the work that they're doing
21 in response to the release they're not responsible for.

22 So, those are the four kind of entities that I
23 see in the program today.

24 What I'm seeing now, and it can have a large
25 impact of a lot of owner/operators is that some

1 owner/operators that have multiple releases, but one
2 release is not their responsibility, but they're cleaning
3 up the entire site, those individuals will be considered
4 by SAF to be partial volunteers, which has a number of
5 repercussions with that.

6 Partial volunteer has to pay the 10 percent
7 co-payment as opposed to an owner/operator responding to
8 somebody else's release, so that's one issue.

9 But the big issue is, volunteers have a cap as to
10 how much you can spend on your facility before you have to
11 comply with the preapproval rules. These owner/operators
12 may be going down this process of going, I'm an
13 owner/operator, I'm an owner/operator, then getting a
14 determination later that, well, you've never been
15 responsible for this one release so you are actually a
16 volunteer, but you spent over \$100,000 at your facility,
17 and you haven't complied with the preapproval process
18 described in the rule. Therefore, all the work you've
19 done, over \$100,000, is not SAF eligible because you
20 failed to comply with the rule.

21 And I don't know how large this population of
22 parties are that have multiple releases, that they may not
23 be responsible for all the releases, but if this is the
24 approach that DEQ is using for saying who's a volunteer
25 and what are your requirements, that very seriously needs

1 to be recognized, publicly noticed, so that if that is the
2 direction you want to go or the Policy Commission can
3 determine it's the appropriate way to go, that the
4 owner/operators are blind-sighted months later after they
5 spent hundreds of thousands of dollars in remediation just
6 because they didn't follow the preapproval process as
7 described in the rule.

8 So, that's something that I'm seeing coming forth
9 now. I think there needs to be discussion on this,
10 whether DEQ has to provide some kind of guidance to
11 owner/operators that may be in this position as to what do
12 you expect people to do, how should people proceed.

13 MR. MC NEELY: I don't think it's a large
14 population. I'm not really aware -- you need to just
15 handle that site specifically with us and bring it to my
16 attention.

17 MR. VANNAIS: Not at all, because I know there is
18 a world of individuals out there that are responsible for
19 two out of the six releases at their site. I mean, I know
20 that from ten years of practice working with the state and
21 working outside of, all these people that I used to
22 manage, both inside the State Assurance Fund or ADEQ and
23 outside, they asked for an allocation of responsibility or
24 I didn't own the tank at that time, I owned it later, but
25 only one owner/operator is responsible for conducting the

1 corrective action, so that delineation has to be made.
2 I'm suspecting there is a lot more people out there than
3 you might think there are.

4 MR. MC NEELY: Just off the top of my head, if
5 you're not an owner/operator of a tank at all, no
6 percentage of it, I think you are a volunteer for that
7 tank.

8 MR. VANNAIS: It's a release. I don't want to
9 have a discussion. The other thing is, I'm just saying, I
10 need to have it be addressed.

11 MR. MC NEELY: Right. But there is another issue
12 that's come up where you have an allocation allocated, and
13 you are 20 percent for this release, I think that's where
14 our database -- we have a new database now, it's an
15 accounting data base, so we catch all this stuff now. You
16 may not pay your 10 percent on that 80 percent of that
17 release, it's getting very, very complex internally to
18 figure out how much your co-pay actually is nowadays,
19 because it all pops up in our database. Like, you know,
20 in the past, things weren't really that clear to us, so,
21 that might be the issue that you might be seeing new stuff
22 because it's there in front of us. But we haven't changed
23 our policy at all. I'm not sure what the issues are.

24 MR. VANNAIS: I'm just requesting a public
25 statement on the bulletin board saying, if you are an

1 owner/operator that is responding to a release that is
2 your own and a release or a percentage of a second release
3 on your site, what is your status. Are you a volunteer
4 and have to comply with the preapproval rule process
5 described in the rule or are you an owner/operator
6 conducting corrective action in response to a release that
7 you are not responsible for.

8 MR. MC NEELY: I am saying give me site specific
9 so I can look at it.

10 CHAIRPERSON CLEMENT: Okay. We have one more
11 public comment.

12 MR. GODUSI: Yes.

13 CHAIRPERSON CLEMENT: Give your name.

14 MR. GODUSI: My name is Martin Godusi. See, I'm
15 from Applied Environmental Solutions, and my question is
16 about the new Tier II model.

17 Basically, I've seen that some closures that were
18 based on the new Tier II model seems less stringent than
19 the Tier II modes which we used in the past. These are
20 used by ADEQ, and a letter sent to them that closure is
21 given to them.

22 And now I heard earlier and before that there are
23 some bugs in the Tier II model. What would happen if
24 these cases found later that there were bugs related? Are
25 we going to reverse the direction, and all those kind of

1 questions related there?

2 And then last question is, why are we so much
3 rushing for this new Tier II model when we hear about
4 bugs, and I personally don't have confidence on that?
5 Thank you.

6 CHAIRPERSON CLEMENT: Thank you.

7 MR. MC NEELY: If you have any site specific, I
8 mean, send an e-mail to us. I'm not sure what site you
9 are talking about and what issue, but in general we don't
10 go back and start reopening sites that we've closed in the
11 past unless there is a real issue where there is an
12 exposure.

13 MR. GODUSI: Your normal way of communicating
14 with you is with Mr. Johnson? Or how are we going to
15 discuss this site specific?

16 MR. MC NEELY: You can send an e-mail to Al and
17 he will forward it to me, if you'd like.

18 MR. GODUSI: I communicated with him a couple of
19 times in this regard.

20 MR. MC NEELY: Okay.

21 CHAIRPERSON CLEMENT: Okay. Thank you. Okay.

22 Any other public comment?

23 I think we can call the end of this meeting. We
24 are adjourned. Thank you everyone. We will see you March
25 22nd, hopefully.

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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 76 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 22nd day of March, 2006.

Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477