

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
May 24, 2006
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
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(Original)

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1 COMMITTEE MEMBERS PRESENT:

2

3 Gail Clement, Chairperson

4 Philip McNeely

5 Karen Gaylord, Esq.

6 Tamara Huddleston, Esq.

7 Andrea Martincic

8 Theresa Foster

9 Jon Findley

10 Michael O'Hara

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

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3 CHAIRPERSON CLEMENT: I would like to welcome
4 everybody to the Underground Storage Tank Policy
5 Commission Meeting May 24th, 2006.

6 And to start the meeting, can we do a roll call.
7 Start with Mr. O'Hara.

8 MR. O'HARA: Thank you. Michael O'Hara.

9 MS. HUDDLESTON: Tamara Huddleston.

10 MR. MC NEELY: Phil McNeely.

11 MS. MARTINCIC: Andrea Martincic.

12 CHAIRPERSON CLEMENT: Gail Clement.

13 MS. GAYLORD: Karen Gaylord.

14 MR. FINDLEY: Jon Findley.

15 MS. FOSTER: Theresa Foster.

16 CHAIRPERSON CLEMENT: Okay. Thank you.

17 Let's move on to the February 2006 meeting
18 minutes. Is there a motion to approve the meeting
19 minutes?

20 MS. MARTINCIC: I move that we approve the
21 February and March 2006 meeting minutes.

22 CHAIRPERSON CLEMENT: Is there any discussion?
23 Any changes, comments, corrections?

24 Is there a second?

25 MS. HUDDLESTON: I will second it.

1 CHAIRPERSON CLEMENT: All in favor?

2 (Chorus of ayes.)

3 CHAIRPERSON CLEMENT: All opposed? No one.

4 Motion passes. We've approved the February and
5 March 2006 UST Policy Commission meeting minutes.

6 The third agenda item, Mr. McNeely has been very
7 kind to give us over the last several months just updates
8 of rules that are going to affect the UST program and
9 where we are, so if you wouldn't mind.

10 MR. MC NEELY: Yes. Rule update. The SAF rules
11 did get approved by the Governor's Regulatory Review
12 Counsel on April 24th, and they should be effective on
13 June 4th, a couple of weeks. They were published last
14 Friday at the Secretary of State's website, so, you want
15 me to read off the website just for the record, or does
16 anybody need to know?

17 CHAIRPERSON CLEMENT: Does anybody need to?

18 MR. MC NEELY: No? Okay. It's on there.

19 Azsos.gov, so they are published.

20 The other one we've been following is the SVE
21 general permit for the air division. That was signed by
22 Nancy Wrona last month, so that is now effective.

23 CHAIRPERSON CLEMENT: Could I ask you just a
24 quick question? If you've got a permit now under the
25 county, do you have to transition into this or do you just

1 wait until your permit?

2 MR. MC NEELY: I don't know exactly, but I think
3 the county has their own authority, so if you have a
4 county, it's fine.

5 CHAIRPERSON CLEMENT: Okay.

6 MR. MC NEELY: And if you had an old permit, it's
7 fine, too. It's just for new permits.

8 CHAIRPERSON CLEMENT: So this is just forward
9 motion?

10 MR. MC NEELY: Right. And it really did improve
11 the process. We added carbon and different stuff.

12 CHAIRPERSON CLEMENT: Thank you.

13 MR. MC NEELY: The last rule was the soil
14 remediation levels rule, and that is still in DEQ internal
15 review. We are trying to get this out for proposal soon,
16 so it will go through the formal process, so we still have
17 -- even if we -- let's say we did it today, let's say we
18 proposed it today, it still takes three weeks to get it
19 published, and then probably give at least a 45-day public
20 comment period, and then to get it actually a final rule,
21 we probably -- even if we did it today, which we're not,
22 it would be probably the January time frame before we get
23 to it.

24 MR. FINDLEY: What rule is that?

25 MR. MC NEELY: The soil remediation levels rule,

1 the soil rules.

2 CHAIRPERSON CLEMENT: Which is, Jon, the UST
3 specific, it's all through the agency in the state.

4 MR. MC NEELY: Right. That's it for the rule
5 update.

6 CHAIRPERSON CLEMENT: Thanks, Mr. McNeely.

7 Any questions, comments on that? Move on, then.

8 We will move to the ADEQ updates, and I guess you
9 are back on.

10 MR. MC NEELY: Sure. ADEQ program update. First
11 of all, let's talk about our new hire. We have a -- I
12 want to introduce somebody -- Michael Traubert, right
13 there. He's our enforcement manager now, so we swiped him
14 from our Water Quality Division. He's been with DEQ for
15 some time. I think you have like six years' experience in
16 water quality.

17 MR. TRAUBERT: Yes.

18 MR. MC NEELY: So now he's going to learn LUSTs,
19 LUST enforcement.

20 We also hired a Hydro III, Brad Hanlon, for state
21 lead, who is a previous consultant, so we have some good
22 experience there.

23 Then we hired Amy Aeed, who is a previous
24 consultant from another state for claims review, and
25 claims review is where we're really hurting for people.

1 We are still -- we've lost -- since the last
2 meeting we've lost one of our reviewers, and we've lost
3 four in the last probably six months in claims review. We
4 actually were at a point where we had zero claims
5 reviewers, which is challenging, because then I put the
6 pressure on all the other PMs across the board to review
7 claims. I think that demonstrates that it's a difficult
8 job. So, right now we have two people doing that. We are
9 trying to look for two more.

10 Continue on with the program update. We did send
11 out a letter -- it's in your packet -- for the financial
12 responsibility requirements at the end of the State
13 Assurance Fund. We've been ongoing trying to do some
14 outreach to make sure that everybody understands the
15 Senate Bill 1306 requirement, that the last day to be
16 eligible for SAF coverage is June 30th, 2006. So we've
17 sent out a postcard a few months ago, and we e-mailed that
18 to Andrea, and I think you e-mailed it out to your people.

19 We've sent this letter that you have in your
20 packet to every single owner and operator that we had in
21 our record, which is about 1200 of them, and it was
22 certified mail to make sure they got it. About a hundred
23 came back, so that shows our database. We're trying to
24 fix our database, so 1100 went out to the proper owners
25 and operators, which is good, and we've had a few dozen

1 calls from that letter, and everyone that called actually
2 understood already, they knew the requirements. They were
3 just calling to verify that they had their insurance
4 paperwork on record, so I got the feeling that the word is
5 out there and no one's going to be surprised.

6 But in addition to that, we have another
7 newsletter that we are about to put out, hopefully in the
8 next couple of weeks, next week, just to let everyone know
9 again. This is not really so much now to go and drill
10 your site to get a confirmed release, this is more -- you
11 need to make sure you have insurance just in case you have
12 a release, because I think it's almost a little late now
13 to start drilling your site, so essentially you need to
14 get insurance if you don't have it.

15 MS. MARTINCIC: Can I ask what the enforcement
16 action would be on, because I have a letter here on
17 noncompliance enforcement action, can I advertise what
18 that is to let folks know?

19 MR. MC NEELY: Yeah. We've been doing that
20 during our inspections. If you don't have FR on site, we
21 give you -- what we call it -- a Notice of Correction,
22 NOC, and all they have to do is show us that they do have
23 FR, or a lot of times they will just fax us the
24 information and then we will say it's satisfied. But if
25 they don't have it, then we will actually probably send a

1 Notice of Violation. If they don't have that --

2 MS. MARTINCIC: If they don't correct the Notice
3 of Correction, then it would be NOV?

4 MR. MC NEELY: Right. And we could actually
5 enforce -- we could give them a consent order, a
6 compliance order, and we could do what we need to do with
7 enforcement, but almost in every case, you know,
8 owner/operators get insurance. There is no reason why
9 they wouldn't, so I think in most cases it's the paperwork
10 thing, they don't have it on site.

11 Is that accurate, Ron?

12 MR. KERN: Yes, correct.

13 MR. MC NEELY: Really, we've been pushing this
14 for the last about a year and a half with our inspections,
15 because we really -- it's in your best interest to get
16 insurance, and I really think everyone knows by now. I
17 don't think it's going to come as a surprise.

18 CHAIRPERSON CLEMENT: If it's a surprise, it will
19 be a very few people. There's been a lot of effort.

20 MR. MC NEELY: Right. And we actually did a news
21 release. DEQ had -- we did a press release, and it was a
22 couple of the rural newspapers, and actually it was Casa
23 Grande, and I forgot -- oh, Kingman I think had it, and
24 we're going to try to do another press release as we get
25 closer. I think that's more important for the rural areas

1 because they're always looking for news in those rural
2 newspapers, and I think that's the easy way to do it.

3 Okay. Also, you asked, and it's not specific on
4 the agenda but I will do it under the UST program update,
5 you asked for how many suspected releases, confirmed
6 releases that have been reported, and 82, these are a
7 backlog of those releases. We've been making an effort
8 really over the last six months to -- on our file, any
9 suspected release, any release that's been reported. If
10 we don't have enough information, we've been sending them
11 letters saying you really need to get us more information
12 and telling them the deadline's coming up.

13 So, I guess, two periods of the time, one is from
14 January 1st, 2005 until May 1st, 2006, so 16 months. The
15 last 16 months we've had 399 suspected releases reported.

16 MS. MARTINCIC: Do we have this?

17 MR. MC NEELY: No, I didn't pass that out.

18 MS. MARTINCIC: Can you say again?

19 MR. MC NEELY: January 1st, 2005 to May 1st,
20 2006, 16-month period, we had 399 suspected releases
21 reported. And out of those 399, it was determined that
22 269 had no release. That could have been a false alarm or
23 inventory discrepancies, but there is no releases.

24 Then 48, there was a verified release -- I'm
25 sorry, not 48 -- we had 82 confirmed releases where we

1 actually assigned a LUST number, and that leaves 48 left,
2 and those 48 are still on the books, and we've sent
3 letters out asking for additional information and they
4 have not responded.

5 That's really our universe of questionable, as of
6 June 30th, those 48, if they don't respond, they need a
7 response soon.

8 MS. MARTINCIC: Did you send out a letter or are
9 you guys making calls?

10 MR. MC NEELY: Letters right now.

11 MS. MARTINCIC: Could it be that it's a database
12 issue, that maybe the hundred that's come back, maybe it's
13 the wrong contact information?

14 MR. MC NEELY: Well, these are actually -- since
15 they submitted that they had a release, we know who to
16 contact back. The other thing was a database, we just
17 sent it out to everybody.

18 MS. MARTINCIC: Right. It may be like -- I mean,
19 it could be that their number changed, or their address or
20 something changed. I mean, for the owner/operator, the
21 release might be at that site.

22 MR. KERN: Ron Kern for DEQ. Basically, whoever
23 reports that, if it's a consultant, if it's for the
24 purpose of the owner/operator, we will respond to both,
25 basically, and to the best of our knowledge it's going

1 back to the appropriate party.

2 MS. MARTINCIC: I'm trying to think of how we can
3 make sure.

4 MR. KERN: None of these letters are coming back,
5 although they're not being sent out certified, either.

6 MS. MARTINCIC: We have numbers calling it 448.

7 MR. MC NEELY: Yeah. I mean, to go above and
8 beyond, you could call the consultant or something or the
9 owner/operators, what we'd rather do, but that's 48. We
10 will look into that, too.

11 But now there is a bigger number. Prior to
12 January 1st, 2005, the history of the program, I don't
13 have how many have been reported, but we have 138 that are
14 still open, and we've sent two letters out recently to all
15 those 138. Actually, in the past we had about 400 and
16 something, but we've been sending letters out and a whole
17 bunch of them have responded satisfactorily where we
18 actually gave them a release or said it was a false alarm,
19 but it's still 138 that have not responded to our two
20 letters.

21 CHAIRPERSON CLEMENT: Just to be clear about what
22 that 138 population means, that's from the program's
23 inception until January 1st, 2005, or until today?

24 MR. MC NEELY: It's January 1st, prior to January
25 1st, 2005, all the open ones.

1 MR. KERN: It's the inception of January 1st,
2 2005.

3 CHAIRPERSON CLEMENT: Okay. So, basically we
4 have a population of 48 and 138 that could be out there
5 somewhere?

6 MR. KERN: Yes.

7 MR. MC NEELY: Which is really not -- if you are
8 thinking of the whole population, we've assigned 8,600
9 releases, or something, and we've had probably thousands
10 of false alarms. When you look at it, it's -- and then
11 you look at the statistics, how the false alarms compared
12 to the actual releases are. 399 we had reported, 269 were
13 false alarms, so it looks like the universe of actual
14 releases may be pretty small out there.

15 CHAIRPERSON CLEMENT: And you said also, Phil,
16 Mr. McNeely, that you sent letters out recently to the
17 138, also?

18 MR. MC NEELY: Yeah, we sent two. I think we
19 sent one in January and then one in March; is that
20 correct?

21 MR. KERN: Yeah. They were about 90 days apart
22 because we were giving them 90 days to respond on the
23 first one, and then when we didn't get a response after
24 the first one, if we didn't get a response, we sent out
25 another letter saying heads up, and with all the

1 information, that the SAF is going away for new releases
2 reported after June 30th.

3 CHAIRPERSON CLEMENT: Would these folks be out of
4 compliance because they've reported a suspected release
5 and haven't followed up with either, whatever, to resolve
6 it or to move it into a LUST?

7 MR. MC NEELY: Yes. They're supposed to follow
8 up with a 14-day report, and then we can make
9 determinations based on that. So, I mean, we could start
10 sending NOVs out, or things like that, but that's resource
11 intensive, too.

12 CHAIRPERSON CLEMENT: It seems like the
13 population that includes the 138, the address issue might
14 be more relevant to the older files than the newer files.

15 MR. KERN: It is possible, but, again, we're also
16 putting the consultant on notice, too, because typically
17 I'd say 99 plus percent of them, the consultant has been
18 the party that's submitted the release or the suspected
19 release information on behalf of the owner/operator, so
20 we're hitting all parties with these pretty much, too.

21 CHAIRPERSON CLEMENT: Thank you.

22 MR. MC NEELY: And we will take a hard look. The
23 time is running out, it's five weeks to go, so we may have
24 another push soon, one last effort to get these people
25 contacted.

1 CHAIRPERSON CLEMENT: Ms. Gaylord.

2 MS. GAYLORD: We had a client farmer whose father
3 had apparently filed a notice of suspected release, and
4 our client didn't know about it, and because of DEQ
5 communication, our client found out about it and got the
6 site closed recently.

7 So, I hear from that client anecdotally and other
8 folks are hearing about suspected releases on their
9 property that they didn't know about, so this
10 communication effort is really worthwhile.

11 CHAIRPERSON CLEMENT: Very good important work.

12 MR. MC NEELY: Well, I guess that's it for the
13 program update. Joe will take over.

14 CHAIRPERSON CLEMENT: Okay. And if we could move
15 to Mr. Drosendahl for the UST Corrective Action monthly
16 update.

17 MR. DROSENDAHL: Yes. My name is Joe Drosendahl,
18 the manager of the Corrective Action Section.

19 I submitted another overview of our productivity.
20 The number of new LUSTs reported since the last report is
21 seven, so we saw a slight increase in the number of new
22 releases. I think last report was 1, so there is a little
23 tidal wave, I guess. And we've closed out 28, and
24 currently we finally pushed over the 80 percent closure
25 mark and it's now 81 percent, so we're getting there.

1 Following that is the number of documents that
2 are in-house pending a review or response from the
3 Corrective Action Section. The total number is 36. Last
4 month it was 45, so that's come down.

5 Municipal tank closure data, there is an error
6 for the USTs removed. It's not 94. That's what it was
7 last month. I think it's 103.

8 And we're still continuing to do Route 66
9 assistance to people. We're still implementing the case
10 management, so people should start, you know, getting
11 letters from DEQ saying, you know, I'm now your new case
12 manager if you have any questions.

13 We're continuing to improve the Tier 2, and like
14 I reported in the past, or was requested, as soon as we
15 get, you know, like the new improved version, we will
16 contact Hal Gill to do a presentation at the Technical
17 Subcommittee.

18 CHAIRPERSON CLEMENT: I'm trying to say this in a
19 polite way. Is there -- what's the problem? It just
20 seems like it's contract dollars, it's staffing. It seems
21 like every agenda we have, we have the same issue, and I
22 don't know if it's even going to be a tool people can use
23 unless it gets out there in a format and in a manner that
24 they can use it, so, I'm confused.

25 I will support whatever you need to get it done.

1 It just seems like this is a very difficult loose end for
2 you.

3 MR. MC NEELY: Tier 2 software?

4 CHAIRPERSON CLEMENT: Yeah.

5 MR. MC NEELY: We keep running into more
6 difficulties. Last month there was some bug that was
7 messing up the Excel. The Excel software we think is
8 messed up, because even our old files we pulled back up,
9 and we try to run our old numbers, and they were having
10 errors all the time. So, we keep having software
11 problems, so it's hard to -- what we're going to try to do
12 in the near future is, when the Soil Rule gets in, we're
13 going to try to update all the chemicals, new, which most
14 of them have pretty recent toxicity data, but we are going
15 to update that and put it in the most recent version of
16 Excel, as close as we can get to recent, and hopefully
17 that will fix it, but that's not real soon.

18 You know, I don't want to spend a whole lot of
19 time on it because we're about to change it anyway. So, I
20 wish we had never actually done it personally because it
21 seems like it has been a headache for a lot of people.

22 CHAIRPERSON CLEMENT: It seems like it's been
23 more of a problem and more expense than it's been a useful
24 tool to anyone, and Hal's not here today, but I don't use
25 it and I don't know the status of the people who use it,

1 but obviously if you wait until the new SRLs, it's going
2 to be at least January of next year, and I think you are
3 going to have to make a decision, either cut bait or fish
4 now with what you've got.

5 MR. MC NEELY: We are using it. Internally we
6 use it. Al Johnson's group has been using it for
7 closures, and other people are using it, other consultants
8 seem to do pretty fine using it, but we don't have the
9 manual out there, what parameters to change, but that's
10 just -- you know, consultants know that on their own, you
11 know, if you can change your pathology or change your
12 carbon content, things like that. This is not going to
13 fix the program. This is just going to give guidance how
14 to do that, even though I think toxicologists out there
15 know how to do that.

16 CHAIRPERSON CLEMENT: It's never been a question
17 about the manual, it's been a question about the package
18 and accessing the database and using the old Excel
19 spreadsheets and, you know, pulling the technical pieces
20 together, not the information about how to use it.

21 Mr. Drosendahl?

22 MR. DROSENDAHL: I think everyone knows it,
23 basically people aren't required to use our Tier 2
24 software. You know, they can use any other Tier 2
25 software out there, so, if people want to use Tier 2 to

1 help get their sites closed, but they are having problems
2 with our Tier 2, they can use any Tier 2 out there.

3 CHAIRPERSON CLEMENT: That's very -- thank you
4 for restating that, because there has to be an
5 alternative. Thanks.

6 MR. MC NEELY: Right.

7 CHAIRPERSON CLEMENT: Any comments or questions,
8 additional questions for Joe or comments?

9 Mr. Drosendahl? Anything else, Mr. Drosendahl,
10 that you wanted to say?

11 MR. DROSENDAHL: No.

12 CHAIRPERSON CLEMENT: It's now the SAF monthly
13 update, and we've had you on staff for that, but I don't
14 know if you want to turn it over to Tara.

15 MR. MC NEELY: Tamara, you want to do it?

16 MS. HUDDLESTON: Sure. I know nothing.

17 MR. MC NEELY: For the SAF, I will do actually
18 the update part, and then -- but I did pass out some stuff
19 just to the Policy Commission members. These are forms
20 that -- they have drafts on there. I will just give you
21 an update on that real quickly.

22 Our rules that go into effect on June 4th has
23 different wording for certain case statements. There are
24 different requirements that the applicant has to certify
25 to and the owner/operator has to certify to, so we are

1 trying to get these forms out to you today, and then we
2 are going to try to e-mail them to our e-mail list Friday.

3 I know it's tight and people are going to want
4 time to look at them, but June 4th is coming up and really
5 it's required to have these certifications, these new
6 applications. So, we are going to make them available
7 this week for people to use, and if you look at the forms,
8 you look at how long they are, that's the current forms we
9 have. We changed a few things in there. Tara can go
10 through it and tell you what we changed.

11 And then through time, if you want to have a
12 subcommittee meeting and look at the changes and make
13 recommendations to change, we can do that. But really by
14 June 4th we have to have certifications, so, we are pushed
15 against a deadline here, even though we are all more than
16 willing to talk about it and listen down the road.

17 Then also you have on the next agenda item --

18 CHAIRPERSON CLEMENT: Ms. Foster, please.

19 MR. MC NEELY: Oh.

20 MS. FOSTER: I have a question relating to, are
21 these documents available electronically right now?

22 MR. MC NEELY: Friday we e-mail them to
23 everybody.

24 MS. FOSTER: E-mail them to everyone?

25 MR. MC NEELY: To all of our stakeholders.

1 MS. FOSTER: Will it be user friendly? Will it
2 be a form type of document or just Word?

3 MS. ROSIE: We will send it in Word and Excel.

4 MS. FOSTER: Will it be sent in a form?
5 Sometimes you can do boxes and fill it all in and then you
6 can't get into them electronically.

7 MS. ROSIE: This won't be formatted. It will be
8 an Excel Word, the same thing we did last time, Excel
9 spreadsheet, so you can put your macros in when you want
10 to.

11 MS. FOSTER: The other question I have is, we're
12 signing all these documents, and we're signing over a
13 registered geologist or a registered engineer. And I keep
14 seeing verbiage in here, and it's probably in the rules
15 that will go into effect June 4th, that I'm having
16 somebody sign over a seal. And I'm not sure that is
17 permitted by the Technical Board of Registration, and no
18 one has given me a clear answer whether that's allowed or
19 not.

20 MR. MC NEELY: What was your question, signing
21 over a seal?

22 MS. FOSTER: Uh-huh. If I'm sending in a report
23 that might be included with the SAF application that's
24 sealed by a registered engineer, I have another document
25 in your draft form that the person, that the

1 owner/operator or the provider is signing over that seal.

2 CHAIRPERSON CLEMENT: Ms. Foster, could you share
3 the page with us?

4 MS. FOSTER: I'm at R-6 on the reimbursement.

5 CHAIRPERSON CLEMENT: R-6. Thank you. Oh, I
6 see.

7 MS. FOSTER: This is Section 9, Certification
8 Statement, Corrective Action Service Provider. Item No.
9 2, it says -- it talks about, in accordance with the
10 applicable requirements of the Arizona Board of Technical
11 Registration, so the provider signing this, is that the
12 owner/operator?

13 MS. ROSIE: It's the service provider.

14 MR. MC NEELY: This is the consultant.

15 MS. FOSTER: But as a city municipality and other
16 cities who have the same problem, they can't sign for the
17 city.

18 MS. ROSIE: There is a separate certification.

19 MS. FOSTER: Now, does that one have language in
20 there dealing with Technical Board of Registration?

21 MS. ROSIE: No, it does not. R-5, the page
22 before.

23 MR. MC NEELY: Theresa, we have two
24 certifications, one for the owner/operator, which would be
25 you as a city person to certify what gasoline was in there

1 and what product was in there. Then the other is a
2 service provider who just has to sign it. If he's a VCR
3 registrant and he's doing VCR work, he needs to sign it,
4 so there is two different certifications.

5 MS. FOSTER: So the owner/operator certification
6 does not state that any work was done under the
7 requirements of the Technical Board of Registration.
8 Okay. Thank you.

9 MR. MC NEELY: Mainly it's not fraud, you know,
10 these statements are true.

11 CHAIRPERSON CLEMENT: So these are the forms you
12 are going to be using as of June 4th?

13 MR. MC NEELY: Right.

14 CHAIRPERSON CLEMENT: Okay. And they will be
15 distributed electronically using Word in Excel format. We
16 have an opportunity to comment if we so choose after the
17 fact. You're open to suggestions on improving or
18 clarifying the format and the applications?

19 MR. MC NEELY: Right.

20 CHAIRPERSON CLEMENT: Is there any impetus from
21 the Policy Commission to take this on as either a
22 Technical Subcommittee or Financial Subcommittee
23 assignment to review this application in some detail and
24 see if there are any comments?

25 MR. MC NEELY: Ms. Clement?

1 CHAIRPERSON CLEMENT: Yes.

2 MR. MC NEELY: You know, there are three forms,
3 direct payment, preapproved application, reimbursement
4 application. These already exist. They are all out
5 there. We changed certification. It looks like it's
6 cumbersome here, but most people are familiar with this
7 except for a few.

8 MS. MARTINCIC: It's same application that was
9 released --

10 MR. MC NEELY: A while back.

11 MS. MARTINCIC: -- to like four months, or last
12 last year.

13 MS. ROSIE: Yes, September.

14 MR. MC NEELY: But the certification is
15 different. There is some verbiage in it that is
16 different, too.

17 MS. MARTINCIC: Do you have the withdrawal forms
18 in here that were referenced?

19 MR. MC NEELY: I do have those, but that was
20 under the next agenda item, but I will pass them out.

21 CHAIRPERSON CLEMENT: But before we go into that,
22 is there any -- do we need further discussion on these?
23 Do we want to consider reviewing them in some detail for
24 the subcommittee process? Hal's not here so --

25 Ms. Foster?

1 MS. FOSTER: Who determines what phases of work
2 should be included in the document? Because we have all
3 these phases listed, and who determines what should be
4 included and what shouldn't?

5 MR. MC NEELY: Tara Rosie.

6 MS. ROSIE: Tara Rosie. I'm not sure what you
7 mean by what should be included. Typically the service
8 provider is the one preparing the application, and they've
9 been using the phase codes to describe the type of work
10 that's being done. For example, D-1 is groundwater
11 sampling.

12 MS. FOSTER: But the Summary of Work form, who
13 determines which phase is A through whatever are included
14 in the application?

15 MS. ROSIE: That corresponds to the phase codes
16 you are claiming on your worksheet. If you are claiming a
17 phase D, 1 is a groundwater sampling in your worksheet,
18 then that's the Form D that you will use in your
19 application.

20 MS. FOSTER: So we only have to include the
21 phases that we are using?

22 MS. ROSIE: Correct. And I tried to split those
23 into separate pages. Before they were kind of matched
24 together.

25 Also, if you notice, we added an item at the

1 bottom of the list, called summary of work. And in the
2 new rule, if for some reason you can't submit all your
3 costs for a task on the same application or request, then
4 you have to let us know. And we added a spot to make sure
5 everybody would remember that if they're going to do that,
6 they need to fill that in.

7 MS. FOSTER: Good.

8 MS. ROSIE: I don't think -- I have one more
9 thing. There is also a Proof of Payment form that's in
10 here. This is actually a new document. In many cases
11 where the applicant is the party that's receiving payment,
12 they don't actually have canceled checks or a copy of
13 their wire transfer, or something like that, so we looked
14 at what some other states were doing, and several other
15 states have a format in order to provide that information
16 to demonstrate the costs were paid. So, that's a
17 supplemental form that may or may not be used depending on
18 what you have available as far as being able to
19 demonstrate the costs were paid.

20 CHAIRPERSON CLEMENT: It doesn't sound like there
21 is a huge impetus to tackle this in any kind of detail
22 from the Commission's side, so, unless we get input from
23 outside the Commission, or the subcommittee chairs rethink
24 this, I don't think we will make an assignment to view
25 this in detail.

1 MR. MC NEELY: And when we e-mail to everybody
2 and everyone sees it Friday and they start using it, then
3 they may start having issues with it. And we really tried
4 -- you know, the rules went through. I know there was
5 some opposition to some parts of the rule, but we're
6 really making a huge effort to make it as easy as
7 possible.

8 CHAIRPERSON CLEMENT: Thank you. So we will
9 leave that now.

10 Ms. Foster.

11 MS. FOSTER: One other question. What if you are
12 in the process of preparing an application, can we still
13 submit older applications after the June 4th deadline?

14 MR. MC NEELY: We will send an AN letter asking
15 you to sign these certification statements.

16 MS. FOSTER: So what we can do is just send the
17 additional documentation?

18 MR. MC NEELY: Right.

19 MS. ROSIE: The actual application itself is the
20 same.

21 CHAIRPERSON CLEMENT: Thank you. Any other
22 questions or discussion on that agenda item?

23 Let's move to number -- oh, I'm sorry. Sorry.
24 Yes, more.

25 MR. MC NEELY: Actually I was going to give the

1 update first, then talk about this second, but since the
2 questions started.

3 So here's just a quick update on the numbers.
4 You will see that this is an alarming bar graph, if you
5 look at this now. Every month we process more than we get
6 in until February started going down, and March and now
7 April, 399 new applications, 30 in the process. The 399
8 is a result of having the ConocoPhillips settlement. We
9 had issues or dispute over eligibility in terms of
10 owner/operator. We settled that. They submitted 300 or
11 so applications -- 302, so now we have 399 applications
12 this month.

13 And the reason we only processed 30 is we
14 actually had zero claim reviewers in April, and we were
15 really working hard on these forms to try to implement
16 this rule. So it's been resource intensive putting in a
17 rule and, unfortunately, ConocoPhillips, the slug came in
18 at the same time.

19 MR. O'HARA: Madam Chair, Phil, do you expect any
20 kind of a spike in May, June, to people trying to beat the
21 rule, or are you seeing anything in May or is it pretty
22 standard?

23 MR. MC NEELY: Pretty standard.

24 MR. O'HARA: And the reason you don't have claims
25 reviewers is the payment issue, you can't pay them as

1 much?

2 MR. MC NEELY: Well, no. I mean, we pay.
3 They're Hydro IIIs, and we uncovered them, so they work
4 with us. They get 21 days a year, and we can pay as well
5 as we pay any other Hydro III, even more, actually. Well,
6 I can't say as well, we can pay them equal to other Hydro
7 IIIs.

8 But the problem is -- and everyone we lost,
9 though, is going to different states. Like the last guy,
10 Mark Recker, we hired him from Texas, he was here about a
11 year and a couple of months, he went back to Texas. I
12 think after a summer here, I think he decided that it's
13 time to leave.

14 MR. FINDLAY: Summer is coming.

15 MR. MC NEELY: The other person that left went to
16 Washington or Oregon. And another one to Washington. We
17 just keep losing people to different states, cooler
18 states, so I think it's a pay thing, but when people leave
19 the state, it's more of a personal life choice thing. I
20 don't think it's pay so much.

21 MR. O'HARA: In terms of attracting new people,
22 what do you have, what you can pay.

23 MR. MC NEELY: Yes. I think it's a payment issue
24 and we need technical people and technical people want to
25 mess around with technical stuff, and looking at claims is

1 not real fun. I mean, it's not bad. Tara likes it a lot.
2 Leon liked it. But not everyone -- you have to have that
3 certain personality that you want to get things done, so
4 it's a different personality. You have to be technical
5 and good at paperwork and willing to stay inside.

6 MR. O'HARA: Does the department consider maybe
7 hiring somebody on a contract basis so they can pay them
8 more?

9 MR. MC NEELY: No, we really haven't, because we
10 have two people right now and we have another job offer
11 out there, so I think we will just keep plugging. We've
12 done pretty good. You can see the numbers. It's just
13 been in the last couple of months, we've had a lot going
14 on, everyone left with pretty short notice, so I think we
15 will get back. We're not going to let this climb real
16 high. We have plans to group all these applications
17 together, you know, really push hard to get these out the
18 door.

19 MS. MARTINCIC: Is there any concern with this
20 large number that is being processed, whatever, is that
21 going to impact like the cash flow, the ability for folks
22 to be paid when they're turning in their reimbursements,
23 or do we need to be worried about potential ranking issues
24 or things like that?

25 MR. MC NEELY: No, and I will just give you a

1 quick update. I don't have the exact numbers, but as of
2 about a month ago, we had about \$47,000,000, about 20 --
3 non-Maricopa was higher. It was probably 27, and Maricopa
4 is about \$20,000,000 in the fund. And with releases now,
5 we closed since 1306 came around last -- a year and a half
6 August, whatever, we've closed about 600 sites. So
7 initially when we were coming up with estimates, 3, 400
8 million dollars of liability, now we're down to -- we have
9 1500 and we're about 80 or 1500, in that range, of
10 releases. Not all those are eligible. Some of those are
11 jet fuel, some of those are federal government, state.

12 So, if you really look at the numbers, you will
13 find about 1400 releases that are eligible for SAF. A lot
14 of those are getting close to closure already, and we have
15 \$47,000,000 in the bank. And this year, we're going to
16 get about 31 million in SAF, so even though the high gas
17 prices, people are still buying gas.

18 MS. MARTINCIC: As much as the 1400 water
19 contamination or issues that cost higher to correct?

20 MR. MC NEELY: About 900. I'm sort of guessing
21 on the number. About 900 in groundwater, about 500 in
22 soil.

23 MR. O'HARA: Phil, there may be a concern that in
24 your processing stage, these 22 to 30, or whatever in the
25 next three months, that stays constant, and you've got

1 these 400 applications, most of which are Conoco's, that
2 an owner/operator who comes to the fund tomorrow, are they
3 going to go behind this big stack, and that's probably
4 four to five months of processing to get to them; is that
5 a concern?

6 MR. MC NEELY: We thought about that, and now I'm
7 actually -- we are trying to put ConocoPhillips together.
8 A lot of those are the same site, so you might have one
9 site that has five or six applications. We are going to
10 process all that and have one. We're going to do those.

11 But, no, the other ones, I don't think we are
12 planning on putting those behind the pile. Really,
13 ConocoPhillips agreed to -- when they submitted, they knew
14 that it was going to take some time, so they work into the
15 120-day deadline. They didn't want to put theirs first
16 and let everyone else wait four months, so they agreed to
17 that as part of our settlement agreement, that don't push
18 the 120-day deadline so we can process, keep everything
19 moving forward, because they are the one losing a lot. We
20 were concerned about that.

21 MR. O'HARA: Thank you.

22 CHAIRPERSON CLEMENT: That is smart. Thank you.

23 When I hear those large numbers, and I know that
24 the legislature is in session still, all I want to say is,
25 you know, whatever you can spend, that needs to be spent,

1 it seems like a pretty high target.

2 MR. MC NEELY: Right. And I'm hoping that
3 owner/operators are pushing hard to get their sites
4 cleaned up. And I don't really know for sure. It seems
5 like we send letters out. All these sites should be --
6 they should be pushing all these sites. We have four
7 years to go, and some of these sites will take four years.

8 CHAIRPERSON CLEMENT: Other materials that you
9 wanted to talk about here?

10 MR. MC NEELY: Well, you can -- if you want to
11 look at the actual -- 506 total active applications, we
12 have 506, but if you look 491 are less 90 days, we just
13 received all of those ConocoPhillips ones. So, if you
14 really look, 14 are over 90 days, one over 180, we are
15 really looking good right as of today. We just need to
16 make sure we do something in May and June and July to get
17 this slug out. I think we will still be looking good. So
18 right now no one's been sitting around waiting for months
19 and months for their applications. It should be pretty
20 close.

21 If you flip to the last page, we changed that
22 last -- where it says appeals page, I passed out a
23 separate page, and what we changed was the formal appeal
24 determination. What we handed out initially said zero
25 final determinations in April, but we forgot that we

1 actually made all those final determinations on
2 ConocoPhillips, so we put 357 here, so that looks good.

3 CHAIRPERSON CLEMENT: Versus one?

4 MR. MC NEELY: That could take time to deal with
5 that. It was a lot of numbers to look at, a lot of
6 applications, so you get occupied when you have --

7 CHAIRPERSON CLEMENT: That's a lot, yeah.

8 MS. MARTINCIC: It looks like the formal appeal
9 requests are increasing pretty -- from 6 to 32?

10 MR. MC NEELY: Yeah, 6, 12, 32. I haven't
11 investigated exactly what's going on with that.

12 MS. MARTINCIC: Might be the new rule.

13 MR. MC NEELY: It hasn't gone into effect yet.

14 MS. MARTINCIC: In anticipation.

15 MR. MC NEELY: Just to get the process down.

16 MS. MARTINCIC: Yes.

17 CHAIRPERSON CLEMENT: Any further materials, Mr.
18 McNeely?

19 MR. MC NEELY: I have something for your Item 5
20 where it says letters of withdrawal, i have another form
21 in response to that.

22 CHAIRPERSON CLEMENT: Any other questions,
23 comments on this agenda item?

24 Okay. Let's move to No. 5, which is the letter
25 to Director Owens regarding the SAF withdrawal policy.

1 Per our last UST Policy Commission meeting, I drafted a
2 letter to Director Owens with our recommendations
3 regarding the withdrawal policy, and you should all have a
4 copy of that.

5 And Mr. McNeely is now handing out materials
6 relative to the -- I love to say this -- the withdrawal
7 policy.

8 MR. MC NEELY: Right. And in response to your
9 letter, we committed to trying to make this a more
10 standardized process so everyone is aware of how to use
11 it. It's not a policy, but right now it's just a form,
12 how do you do it, because people in the past have done it.
13 They've written us letters saying we're withdrawing this,
14 and we've done settlement agreements, but there's been no
15 standardized way. Apparently not everybody knew exactly
16 how to do it, so now we compared four forms. And, Tara,
17 you want to talk about these forms quickly?

18 MS. ROSIE: Sure.

19 MR. MC NEELY: Okay.

20 MS. ROSIE: If you notice, there are four forms,
21 the first two, W-1 and W-2, are to withdraw costs. The
22 second two, 3 and 4, are to apply for those costs on a
23 future application.

24 Form 1 is if you want to withdraw the whole
25 application, and we have several people that will submit

1 an application, then decide they want to withdraw the
2 whole thing. That's happening more frequently since
3 December with the \$5,000 limit on applications where
4 people submit it and then say, wait a minute, let me pull
5 it back and combine it with something else I've got to get
6 the costs up.

7 So, if you fill out Form 1, it just allows you to
8 say you want to withdraw the entire application, give us
9 the type of application and the number, and says that you
10 recognize that we are going to close our file with respect
11 to that application or request once you submit that form.

12 The second form is to be used if you're only
13 withdrawing part of the costs on an application. So, say,
14 you've got ten lines on your worksheet and you want to
15 withdraw two of them, you can submit this form, identify
16 which two lines you wish to leave out this time. That
17 will remove them from our processing and we will no longer
18 consider them. We will put a withdrawal code on your
19 determination letter. And then if in the future, for
20 example, if it's a site characterization report that
21 hasn't been approved yet, and you want to submit those
22 costs, the next two forms, depending on when you withdraw
23 it, the Form 3 would be used to submit those costs again.

24 Form 3, the withdrawal process in 1 and 2, and
25 then Form 3 are to be used if you are withdrawing those

1 costs prior to the department issuing a final
2 determination.

3 A final determination is subject to a formal
4 appeal, so, if you have not withdrawn anything, we issue a
5 final determination, and then you decide you want to
6 withdraw it, then we work with our AG's office to draft
7 settlement agreements or stipulations.

8 The last form is the form that you would use if
9 the costs are actually withdrawn during a formal appeal
10 process. And so we tried to make it as clear and as
11 concise as we can. We are always welcome if somebody
12 finds something wrong with it. That's why I try to put
13 versions on stuff.

14 CHAIRPERSON CLEMENT: And just -- this will be
15 available where and how?

16 MS. ROSIE: We will send it out with the e-mail
17 with the applications.

18 MR. MC NEELY: Friday. And this is completely
19 new, so it's a new form, it's not a new process, but this
20 is in response, if you wanted to know, we wanted a
21 standardized process, so we expect once people start using
22 it they will have comments, and this is a form, we can
23 change a form easily.

24 CHAIRPERSON CLEMENT: Just because -- at least
25 what my understanding is, not a lot of people understand

1 that it's even available to them. Are you going to do
2 additional, like education in your e-mail, or outreach in
3 other ways to make sure that they know that this is
4 available to them?

5 MR. MC NEELY: Right.

6 MS. ROSIE: We are going to be updating the
7 website as well as sending out the information.

8 MR. MC NEELY: We also wanted to have actually a
9 training on the forms and the new rule. We really wanted
10 to do that in May before the rule went into effect, but as
11 you can see, this has been a lot of work.

12 CHAIRPERSON CLEMENT: A lot of work.

13 MR. MC NEELY: So we have not been able to get it
14 together, especially with the new applications coming in.
15 So, we do plan on doing some training, and I would like to
16 have it here in Room 250, just have anybody that prepares
17 applications come in. We can go over all the forms. It
18 would be nice for them on Friday to get it, to look at it,
19 then if we've got to do training, everybody actually has
20 read the rule, looked at the forms, then we can probably
21 do that sometime in June.

22 CHAIRPERSON CLEMENT: And when will you be able
23 to set a date for that so we can get notice out because
24 it's already the 24th of May?

25 MR. MC NEELY: Right. We will talk about it this

1 week and see what we can do.

2 CHAIRPERSON CLEMENT: So your goal is June 2006
3 for training?

4 MR. MC NEELY: Right.

5 CHAIRPERSON CLEMENT: Will it be comprehensive to
6 SAF Rules? This is a practice and the forms?

7 MR. MC NEELY: Right.

8 CHAIRPERSON CLEMENT: Okay. Well,
9 congratulations. That's a lot of -- you do a lot of work
10 when we don't have monthly meetings.

11 MR. MC NEELY: Yeah, sort of busy.

12 CHAIRPERSON CLEMENT: Any other questions or
13 comments at this point in time on this? Topics. Okay.

14 Okay. The next one is mine. I still am awaiting
15 materials from the Arizona Department of Environmental
16 Quality for the annual report. And could somebody give me
17 a firm date in which I may receive them so that -- I mean,
18 I'd like to get them in. I would have liked to have
19 gotten the annual report out sooner than now, and it's
20 going to take a while from now if I don't have any of the
21 necessary material.

22 MR. MC NEELY: Are we going to e-mail it today?

23 MR. DROSENDAHL: You just said --

24 MS. ROSIE: I have that change.

25 MR. DROSENDAHL: Yes, so it's 98 percent done so

1 --

2 MR. MC NEELY: We will e-mail it today. We will
3 probably e-mail it today.

4 CHAIRPERSON CLEMENT: Great. So in the next week
5 you will all get a copy of the draft annual report. I
6 will give you a due date for written comments. We will
7 discuss anything that's substantive at the next Policy
8 Commission meeting, approve it, then I can get it out,
9 because I don't feel very timely, actually.

10 Okay. Good. Next, Financial Subcommittee
11 update, Andrea Martincic, chairperson.

12 MS. MARTINCIC: We met on April 27th just to
13 talk about the withdrawal policy, and Tara was at the
14 meeting and basically let us in on the fact that, you
15 know, the agency is working on sort of developing training
16 and materials to help the regulated community with that
17 policy that some folks weren't familiar with completely,
18 and I was going to announce that they were going to do
19 some training late in May and now it looks like June, so I
20 think that will be an important educational tool for the
21 regulated community.

22 We also talked about the scope and standard of
23 review and whether there needed to be supplements to the
24 application, and also the agency reminded folks to use
25 footnotes and extra details in the invoices if they are

1 submitting costs, so, we had a pretty productive meeting
2 and that's my report.

3 CHAIRPERSON CLEMENT: Yes, Mr. McNeely.

4 MR. MC NEELY: I'm sorry, there was one more
5 thing I was supposed to pass out. It sort of goes along
6 with this, the Financial Subcommittee update.

7 Tara, you want to talk about this, too?

8 MS. ROSIE: Sure.

9 MR. MC NEELY: These are cost ceilings. We have
10 to adjust our cost ceilings, revise it before July 1st
11 before we do the annual update just to comply with our
12 rule, so this is more of that.

13 MS. ROSIE: This is a portion of the cost
14 schedule document that relates to the phase code, and what
15 we did was try to make it more explanatory and make it
16 coincide better with the new SAF rule. For example, all
17 references do not say Summary Work Sheet have been changed
18 to Cost Worksheet, and we included a discussion, a little
19 description regarding R18-12-608(C)(1)(h). This is an
20 area where a lot of people seem to have some concern
21 regarding how they submit costs associated with a task.

22 The added units of measure to the phase code
23 Task/Incremental column is the easiest one, and we put in
24 some examples to help people understand how to apply the
25 phase codes and how to use a unit of measure.

1 For example, with your groundwater sampling, if
2 you need to submit your costs associated with a named
3 sampling event, groundwater sampling event, that includes
4 your bailers, your personnel time, your mileage to get to
5 the site, your analytical, all your associated costs, and
6 there is a specific phase code for that.

7 And what we've done, if you look to D1, which is
8 page 4 of 10, that groundwater sampling task is per event.
9 And what we've tried to describe that, even though the
10 rule says to the extent practical, all costs associated
11 with that task are incremental are supposed to be in one
12 application or request, there is a provision that, if you
13 can't do that for some reason, you are allowed to submit
14 partial costs for a task or an incremental, but the
15 provision is, however, that on the work summary or Summary
16 Work Form, you give us an indication of what was excluded.

17 So, for example, if you do your groundwater
18 sampling and for some reason the lab doesn't get you your
19 lab invoice timely, you can still submit your costs for
20 that sampling event, but on your Summary Work Form, you
21 will indicate lab invoice has not yet been received, so
22 these costs aren't included.

23 Then if on your next application you are
24 submitting the lab costs from that May event separate from
25 the rest of it, you will refer back to the Summary of Work

1 when you told the department, I told you this was not
2 included at this point in time.

3 CHAIRPERSON CLEMENT: Cost ceiling revisions, so
4 this is one supporting piece of this, correct?

5 MS. ROSIE: This is the cost schedule, the
6 portion of the cost schedule that we had to change for the
7 June 4th rule. And then what we will be trying to send
8 out next week is the whole package of the new July 1st,
9 2006 cost schedule, which includes the costs that have
10 been updated for the quota.

11 CHAIRPERSON CLEMENT: Those cost schedules have
12 been pretty controversial in the past. Are they -- is
13 there -- I'm asking you all if you expect it to be
14 significant at all at this point in time?

15 MR. MC NEELY: No. We are planning on doing the
16 cost of living adjustment. I haven't really heard that
17 many complaints of the new cost schedule since July. And
18 this update, we are passing a lot of paperwork out, but
19 really it's instructions for the first page and a half and
20 then all it is is changing per event. It's not
21 significant, but there were some questions on the new rule
22 and comments about that.

23 CHAIRPERSON CLEMENT: I think this is going to be
24 very helpful. It really does lay it out. It's obviously
25 not a simple process, but at least now I can understand it

1 more clearly. I was more interested in seeing the dollar
2 amounts associated with particular activities. All you
3 are doing is a cost of living adjustment. There is no
4 other big changes to that.

5 MR. MC NEELY: You know, we're always open to add
6 something, but I haven't really heard, you know we're
7 missing something that is causing problems. It seems like
8 it's been going fairly well.

9 CHAIRPERSON CLEMENT: And that information -- I'm
10 sorry, Ms. Foster.

11 MR. FOSTER: Will this information also be
12 available with what you are sending out on Friday?

13 MS. ROSIE: This package?

14 MS. FOSTER: Yes.

15 MS. ROSIE: Yes, it will.

16 CHAIRPERSON CLEMENT: There is going to be some
17 returned e-mails.

18 MR. MC NEELY: Because when you get all this,
19 it's going to look like so much.

20 MS. MARTINCIC: You can't post it on your site,
21 too? I'd post them on your site. If someone can't get it
22 through e-mail, they can download it off your site.

23 MR. MC NEELY: That's true. A lot of e-mails
24 reject. When we tried to send the rule out, and then we
25 type our e-mails forever, too, then they keep coming back.

1 MS. MARTINCIC: You could notice that the new
2 documents are available for download, then that way for
3 whatever reason someone's computer couldn't handle it.

4 CHAIRPERSON CLEMENT: And list them in the copy
5 e-mail list what you are sending so they can find it if
6 they don't get it.

7 MR. MC NEELY: We will send an e-mail out without
8 attachment saying, find it here. We can send them out,
9 because I don't know if we can do Word and Excel.

10 MS. ROSIE: You can't do it on the website.
11 That's why we sent it out separate mail, and it seemed
12 easier to send the reimbursement application e-mail
13 separate because there are several different forms, and
14 then a direct pay and then a preapproval and then we would
15 send a fourth e-mail for the supplemental forms. But we
16 can also burn some CDs, which we did last time as well.

17 MS. MARTINCIC: You are saying you can't have it
18 as a downloadable application on the Internet? Can't you
19 convert it to a PDF or something?

20 MS. ROSIE: We can post it as a PDF but that's
21 not user friendly for people who want to actually be able
22 to pull it up on their computer and just fill in.

23 CHAIRPERSON CLEMENT: Interesting. Ms. Foster?

24 MS. FOSTER: For educational purposes, you can
25 open up the PDF, Andrea, but you can't add anything to it.

1 It's a locked document.

2 MS. MARTINCIC: Right.

3 MS. FOSTER: So you could post it and people
4 would know that, yes, there is a new form, but maybe say,
5 if you need a copy electronically, e-mail so and so.

6 CHAIRPERSON CLEMENT: This is a lot to get this
7 out and to get the information to the regulated community
8 and consultants. We need as many ways as possible.

9 MS. MARTINCIC: I don't understand why you can't
10 post it. The Secretary of State does a lot of them. They
11 post their forms and you can actually go on and open it
12 up, and, I mean, I don't know, it just seems odd that your
13 system would be that different from the Secretary of
14 State's site.

15 MS. FOSTER: It's very labor intensive to set up
16 forms like that on the web. I've done it for other
17 applications, and with this being so lengthy, it would
18 probably be better just to post the form saying if you
19 need an electronic copy, Word and Excel, e-mail someone at
20 DEQ.

21 MS. MARTINCIC: I don't know. It just seems
22 strange but --

23 CHAIRPERSON CLEMENT: Mr. Findley?

24 MR. FINDLEY: If you have a server, it's a
25 different kind of server, you'd have to go to the --

1 what's the server where you --

2 MS. MARTINCIC: I guess the lobbying forms don't
3 change as much as the SAF forms do.

4 CHAIRPERSON CLEMENT: Great. Anything else on
5 that? Any other forms, any other SAF materials?

6 MR. MC NEELY: I think I'm burnt out on SAF
7 forms.

8 CHAIRPERSON CLEMENT: I would imagine you are.

9 MR. MC NEELY: So is the forest.

10 CHAIRPERSON CLEMENT: Financial subcommittee,
11 anything else on the subcommittee report?

12 MS. MARTINCIC: Done.

13 CHAIRPERSON CLEMENT: Mr. Gill is not here, but
14 there was a Technical Subcommittee meeting, and he asked
15 me to give you all information about that.

16 They've completed the discussion of all the
17 topics on the outline for a generalized remediation
18 program, and that's a format that has been submitted to
19 the Policy Commission previously. He did not want to
20 re-send it out because at this point we are waiting for
21 DEQ to respond to the issues raised, including the
22 permitting issues identified in the permitting matrix.

23 So, according to Hal, we are waiting for a
24 response to the permitting and remediation matrix from
25 DEQ. And do we have any kind of a time frame for that?

1 Mr. Drosendahl?

2 MR. DROSENDAHL: Yeah. Basically I need to get
3 together with Tara's staff to kind of go over those
4 questions and, as you can see, they've been a little on
5 the distracted side, so, hopefully, we can get the others
6 soon in that they have a little window of opportunity.

7 MR. MC NEELY: I would say the window is not here
8 yet.

9 MR. DROSENDAHL: Okay.

10 MR. MC NEELY: It may be later in the summer, I
11 would think.

12 CHAIRPERSON CLEMENT: So, probably 60 days.

13 MR. MC NEELY: I'd say July, earliest July, and I
14 haven't seen all the questions yet either. Some of these
15 questions are -- it's really site specific and up to the
16 consultant to figure it out. You can't really come up
17 with a comprehensive response to every question about
18 determination.

19 CHAIRPERSON CLEMENT: Any other -- the other
20 question that Hal had for the Commission and for Mr.
21 McNeely was, are there any other topics that you want or
22 think need to be addressed by the Technical Subcommittee
23 at this point in time?

24 MR. MC NEELY: We are going to -- I've committed
25 to work on that MNA rule. For us to give an -- in Senate

1 Bill 1306, we can give no further action once you get the
2 source removed and then have MNA. Part of that is, if you
3 submitted a cap or a work plan, put the money aside to MNA
4 fund, part of the hazardous substance fund, and that goes
5 up to 60 million dollars that we have to have at sunset.
6 That all has to be done in rule, so there is a technical
7 portion of that. When you get an NSA, what is MNA, what
8 are we going to do with the MNA money, what type of
9 monitoring, can we just close the site outright. Those
10 are the type of things that we need to have some open
11 discussion with stakeholders.

12 I'm not so sure that should be -- I don't know if
13 I want to confine that to our Technical Subcommittee, so I
14 think that's going to be bigger, more like a Soil Rule
15 type of thing, getting a lot of the water providers or
16 cities involved and talk about that, but that should be
17 coming, you know, late summer, and early fall we should
18 start working on that.

19 CHAIRPERSON CLEMENT: We might want to think
20 about peeling off maybe some of the really technical,
21 technical stuff, you know, like definition of MNA that
22 technically, things like that that will happen to be part
23 of it and mush it around with more technical minded people
24 versus more policy people. Something to think about.

25 MR. MC NEELY: Because there is a lot of policy

1 in here in terms of liability, who gets the money, where
2 does it go, who does the work, that's all more policy.
3 And then there is technical stuff. What levels do we
4 leave in the ground, or how long MNA, are we going to
5 allow five years, ten years, how much of it do we need,
6 things like that, so that's the technical portion.

7 Sort of interesting, though, it's combining
8 technical and financial policy.

9 CHAIRPERSON CLEMENT: What we could do and,
10 again, I'm not wedded to any kind of process here, but
11 what we could do is we could peel off some of the
12 technical things and address them very purely in a
13 technical framework, and then you can add them to the mix
14 of the policy regulatory work that you are going to have
15 to do, but at least you'd have a fairly pure technical
16 viewpoint to work from. Perhaps that is built on
17 consensus, so you have a base or a foundation. And then
18 if you are arguing, you know, at least you don't have to
19 argue the foundation of technical things.

20 MR. MC NEELY: And what we wanted to do also,
21 was, we have probably about 5 to 600 facilities with
22 groundwater contamination, and a lot of those are probably
23 pretty close, they are MNAing right now, and probably
24 getting pretty close to closure. And then this is one
25 reason why we haven't really gone down this path yet is we

1 wanted to review those files and figure out which ones
2 internally, technically, we think these are probably not a
3 risk, we can probably close these or these are MNA, these
4 are active.

5 So when we are having these conversations with
6 technical minded people, it's not a hypothetical, it's
7 more, look at these sites, this is what we need. I think
8 it would be easier to come up with, especially for the
9 nontechnical people, the water providers that might be
10 worried if we're going to close something, it would be
11 nice, like she said, if this is what we're talking about,
12 one well contaminated on-site, things like that.

13 But that's going to take a little bit of work to
14 go through those files. So that's what we're waiting on.
15 I know in my head how I'd like to see it work, but we have
16 to start verifying that with real life technical scenarios
17 to see if it actually would work.

18 CHAIRPERSON CLEMENT: So right now we don't have
19 any. Hal will be pleased, we don't have any agenda items
20 at this point in time for the Technical Subcommittee.
21 Thanks.

22 The last issue on the Technical Subcommittee was
23 regarding the registration requirements for -- and it's
24 just a reminder, because I frankly was not fully aware of
25 this. There are some e-mails that crossed I think various

1 people's desks, and apparently there is a UIC registration
2 requirement for certain types of injection wells, for all
3 injection wells, but certain types of wells related to
4 aqua fria mediation, such as air sparging wells, and
5 that's the last I heard. I've got the regulatory citation
6 here.

7 Is there any additional clarification on that
8 that you pursued?

9 MR. MC NEELY: Yes. The UIC is not a ADEQ
10 program.

11 CHAIRPERSON CLEMENT: This is a federal.

12 MR. MC NEELY: This is an EPA federal program.
13 We do not have delegate authority. I think a lot of
14 people thought that UST has exemption from APP so they
15 don't have to worry about that, but UIC is a federal
16 program.

17 Now, the air sparging, I haven't heard. I don't
18 know for sure, but I didn't think air sparging was
19 included in the UIC. I think you have to check the
20 liquid. And the permit, from what I've seen, is usually
21 -- I think it's a class 5, which is just one form you fill
22 out, you send it to EPA and they never respond to you.
23 They just put in it their database.

24 CHAIRPERSON CLEMENT: At least -- and I have not
25 done my original research on this, but my understanding

1 that there is a registration versus a permitting
2 requirement, and I've got all the e-mails back and forth.
3 I don't know if you have, but from what I understand, that
4 UIC registration, USEPA Region 9 is required for air
5 sparging wells. Is that correct or not?

6 MR. DROSENDAHL: I don't know.

7 MR. MC NEELY: Well, I don't want to speak on
8 behalf of EPA, but when I looked at the regs, I thought it
9 had to be liquid, not air, because I'm sure there are a
10 lot of air sparging wells across the state that aren't
11 registered with the UIC. I'm thinking more of injection
12 wells for pump and treating, injecting up gradient, things
13 like that, definitely you need to send that in to EPA.

14 CHAIRPERSON CLEMENT: Well, I knew that, but this
15 is according to a conversation with Ms. Nancy Rumrill at
16 USEPA Region 9, and confirmation with her supervisor, with
17 Ms. Liz James, classified experts, both phone numbers
18 here.

19 You know, Hal's not here for me to ask this, and
20 I did not take this on personally other than to make sure
21 I would mention it. Could we just clarify this because
22 obviously there are some people in the regulated community
23 that are confused about this, and if it needs to be done,
24 we need to inform people, and then obviously if it's an
25 eligible cost, it needs to be covered under the SAF.

1 MR. MC NEELY: If you give me those numbers, I
2 will call those people. When I look at the regs, that was
3 not my understanding.

4 CHAIRPERSON CLEMENT: I'm not aware of what the
5 actual rules should be here.

6 Any other questions or comments on that? Okay.
7 Let's jump.

8 Oh, summary of meeting action items. Okay. I
9 think we've got some.

10 DEQ is going to send out an e-mail or e-mails
11 with several or many of SAF documents and applications
12 attached. They're going to provide also a website update
13 contact information and attachments that cannot be used on
14 a Word or Excel format, but can be used to download and
15 see what the information is.

16 DEQ is going to provide to Gail Clement the
17 annual report statistics within the next week.

18 DEQ is going to respond to the remediation matrix
19 probably in July at the earliest.

20 That be it. Anybody else capture any other
21 agenda?

22 MS. MARTINCIC: Training in June.

23 CHAIRPERSON CLEMENT: And training in June. I'm
24 sorry. Thank you.

25 Next. Agenda items or schedule for the next

1 meeting. I would propose that we do not need a meeting
2 until July, unless there is some compelling reason
3 otherwise.

4 No discussion on that?

5 Any other agenda items that people want to
6 discuss now for the next meeting? Always feel free to
7 e-mail me. I'm not screaming something outrageous, but
8 I'm adding them to the agenda as Policy Commission members
9 request.

10 Okay. Next. General call to the public? Yes,
11 Mr. Leon Vannais.

12 MR. VANNAIS: Thank you. Leon Vannais, Tierra
13 Dynamic.

14 I've got three issues that I'd like to briefly
15 discuss. I've been receiving phone calls from other
16 consultants in the state. We have brought this up before
17 about the mandatory preapproval for volunteers and the
18 requirement to collect data to support certain plans over
19 time.

20 There is a provision in the statute that says at
21 the request of the department in writing, it's compensable
22 for the fund. It says volunteers have to adhere to the
23 preapproval rule.

24 The problem is, is that work plans are being
25 submitted, work plans are being considered at sites where

1 there may not have been sufficient data or reason enough
2 data to support, to strongly support any kind of proposed
3 remedial activity either on review of the consultants or
4 within the review of the ADEQ case managers.

5 The ADEQ case managers are issuing letters,
6 apparently, saying that we'd like to see another
7 groundwater sample collected, or some confirmation borings
8 because it's been such a long time since anything has been
9 collected in these areas.

10 The problem is that in order for us to do
11 anything if we're uncertain about this is that we've got
12 to prepare, submit and be approved for these activities
13 before we even go ahead and conduct them. So, they're
14 saying, please provide another groundwater sampling within
15 90 days so that we can review your work plan.

16 Well, in order to do that, we may have to
17 prepare, submit a work plan just for one round of
18 groundwater sampling, and then some kind of reporting for
19 that in order to provide an accurate review of a work plan
20 that actually deals with their contamination.

21 The other option is the department could issue a
22 policy statement saying that at the direction of the
23 department, that under a provision it says, if it's
24 written and it's directed to the individual, then that's
25 compensable and that overrides the mandatory preapproval

1 process, then maybe that's a way out of this.

2 But either way, I think we would like to see
3 something from the department, either a policy statement,
4 something that does not necessarily need to be reviewed, I
5 don't think, by a subcommittee, but something out there
6 that says you need to always go into preapproval so if
7 additional information is requested, then a small work
8 plan has to be prepared and submitted and approved before
9 that additional information can be collected and
10 compensable.

11 You understand that we have spoken about this
12 before, so at this stopping point nobody knows what to do.
13 If we keep on submitting small work plans, these sites
14 will never be closed.

15 So, I'm requesting the Policy Commission at least
16 recommend to DEQ to consider a policy statement dealing
17 with this, how can we deal with this, how can we move
18 forward in a timely and cost effective manner.

19 The second comment, I did walk in a little late,
20 about the Tier 2 risk assessment, we understand that the
21 ADEQ Tier 2 risk assessment is not the only tool out there
22 for evaluation, but I've also gotten the impression from
23 the State Assurance Fund that the ADEQ model is the most
24 cost-effective model, and therefore the only model that's
25 approvable at any of these sites. And there are a number

1 of problems with this besides the technical issue and all
2 those things. The level of effort that DEQ considers
3 adequate to run the Tier 2 has been three or four hours of
4 technical or private level personnel to run this model.

5 I have problems with this. If my registrants are
6 to be stamping the valid results from these models, the
7 first thing that you open -- that you see when you open
8 the DEQ model is the two-page disclaimer saying, we, DEQ,
9 has no reliability in the data that's produced so that my
10 engineers have to go through and look at each one of the
11 assumptions in the model to confirm that they are indeed
12 correct before that model is stamped.

13 Alternatively, the argument can be made that risk
14 assessment model does not need to be stamped because it
15 does not fall under the purview of BTR. Special
16 consideration of the main designer of the model herself is
17 not a registrant.

18 So, I'd like the Policy Commission to recognize
19 all this also. We can use other models outside of the
20 purview of SAF apparently, but within SAF, the ADEQ model
21 is the only one that's being allowed, and we're having a
22 hard time validating that model.

23 And the third is more of a change over from the
24 SAF database. The previous determinations that the
25 database issued was very nice in that it had a running

1 tally of the coverage models that's available to you on
2 each determination that came forward. That was a great
3 tool. Everybody knew exactly where everybody stood. We
4 knew how much money was left. If we knew if we had to ask
5 for another \$500,000 for owners/operators in certain
6 conditions, that would be fantastic.

7 The new forms that are coming out don't have that
8 running tally. We can track that independently, but I
9 would like to know if there is a place or an individual at
10 DEQ that I can contact to confirm that my tally matches
11 DEQ's tallies so there is no confusion, we all have an
12 idea of what these coverages are.

13 So, I don't know if anybody wants to address any
14 of those issues at this point, but I would request that
15 somehow I get a response to my questions. Thank you.

16 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais. We
17 are limited by the Open Meeting Law on what we can and
18 cannot discuss. Some of these seem to be relatively
19 straightforward and perhaps a side conversation with the
20 appropriate SAF manager would be helpful. The other
21 issues, we can potentially talk about it another point in
22 time.

23 MR. VANNAIS: Pardon me?

24 CHAIRPERSON CLEMENT: At another point in time.
25 I'm not allowed to address that at this point.

1 MR. VANNAIS: I mean, can I request to put it on
2 in the future?

3 CHAIRPERSON CLEMENT: Again, I can't address the
4 issues that you've brought up. I can say that we will
5 consider putting them on.

6 Any other issues anybody else has, we will
7 consider putting them on the agenda.

8 MR. VANNAIS: Okay.

9 CHAIRPERSON CLEMENT: Anything else?

10 Okay. We are adjourned. Thank you everybody.
11 See you next time.

12 (10:16 a.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 61 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 24th day of May, 2006.

Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477