ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE

UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
May 23, 2007
9:00 a.m.

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Phoenix, Arizona

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COMMITTEE MEMBERS PRESENT:

Gail Clement, Chair
Joseph Mikitish
Michael O'Hara
Philip McNeely
Theresa Foster
Jon Findley

P R O C E E D I N G S

CHAIRPERSON CLEMENT: Let's get the meeting started. This is the May 23rd UST, Underground Storage Tank Policy Commission meeting. We do have a quorum.

This is the call to order and I will begin the roll call with Mr. -- I say that wrong continually.

MR. MIKITISH: Mikitish.

CHAIRPERSON CLEMENT: Thank you.

MR. MIKITISH: Joe Mikitish.

MS. MC NEELY: Phil McNeely.

MR. O'HARA: Mike O'Hara.

CHAIRPERSON CLEMENT: Gail Clement.

MS. FOSTER: Theresa Foster.

MR. FINDLEY: Jon Findley.

CHAIRPERSON CLEMENT: Welcome everybody. Glad you're here. Welcome to the audience. We're glad you are here, too.

Did everybody have a chance to read their packets and to receive all the materials that came out? I didn't get the meeting minutes. Did I miss that? I must have missed it.

MR. KERN: They were in the e-mail.

CHAIRPERSON CLEMENT: I didn't get it, so I apologize.

Did other people receive it and have a chance to review them? Otherwise, I'm just going to ask if we've all had a chance to review them.

You have?

MR. O'HARA: I have them.

CHAIRPERSON CLEMENT: Mr. Findley? No.

Okay. Let's just move this agenda item to the next agenda, perhaps, and then give everybody a chance to review those meeting minutes before we discuss them.

Okay. The next agenda item is the discussion of rules affecting the UST program, and Mr. McNeely is going to talk about that. And then we're also going to cover the -- we could just do it all at once. We'll cover those under the Technical Subcommittee, also, but we will have it all on the one agenda item.

MR. MC NEELY: Okay. Do you want me to wait for the --

CHAIRPERSON CLEMENT: No, you can start, please. Sorry.

MR. MC NEELY: Rules affecting the program. I will add something else that we do have under the other category. We are all working on the control and contaminated soil special waste rules. UST is exempt from that if you are actually doing UST cleanup, but it's just sort of related. We're working on that this summer.

Waste program is in the Lead Division, but I'm just helping to make sure that it's consistent with what we do with petroleum and make sure that we are still exempt.

No further action on the Natural Attenuation Rule. We will talk about that in the Technical Subcommittee, but once -- the process, once we get through the vote today, and if you approve the letter that you are proposing to send, we will have that out for public comment probably in July. I mean, I think we're really very close to putting that out for public comment, which means we will probably give them a 45-day public comment period, a couple of public hearings, and then we are hoping we can have that to -- this fall to the Governor's Regulatory Review Counsel, which means that it would be 60 days after that, so it could be as early as next January effective date.

I will just go right on into the UST program update.

CHAIRPERSON CLEMENT: Great. Thank you.

MR. MC NEELY: One thing we want to start this summer is the Energy Act that was passed a couple of years ago, and there are new provisions in the federal law that the State implemented.

Three of them that require statutory changes are delivery prohibition, secondary containment requirements

related to a well or even any piping that actually carries water, so basically every site has to be secondarily contained.

Then operator training. There is a requirement to have three different levels of operator training for a person on the station and the actual person in charge of everything, and then the middle manager type person.

So these things require statutory changes, and we'd like to start having stakeholder groups probably starting in June, late June, early July time frame just to talk about what the stakeholders would like, put some legislative proposals together and see where that goes. Because what we're thinking is that we will get some legislative authority to do this, then we'll probably implement this rule, the actual details, so it will take us a year to get it -- at the very minimum a year to get it through the legislation if it passes the first time through, and then it will probably take us another year or so to actually write rules to implement.

Part of the problem is, a couple of these things have already passed. The delivery prohibition, that was February of this year, was the requirements for the federal law. So, what the feds are saying, you know, they give us grants every year, about a million dollars in LUSTs and about 300,000 in USTs. So part of the condition

to get that grant money is that we have to say that we are really going to try to implement this federal law.

So, we are telling them we're going to try, but it's a legislative process that we have to go through.

CHAIRPERSON CLEMENT: From your perspective, from the Agency's perspective, besides the LUST/UST grant money that you need, are you supporting this from a policy perspective? Do you think these are good elements to include in the State program?

MR. MC NEELY: Well, it depends on the detail. The thing is the delivery prohibition, if we really make it, if you tailor it for your state, what violation would require delivery prohibition. I think that's as stakeholders we have to decide, and as an agency, and probably as the legislature, too, decide what level of violation would trigger that prohibition, and we're thinking it would have to be really pretty severe, where if you put fuel into your tank system, you are going to leak, it would have to be a pretty severe thing.

CHAIRPERSON CLEMENT: Not as prohibitive if it comes from the outside, it's prohibitive as you are going to be --

MR. MC NEELY: Yeah, a real problem. That is the type of stuff we need to talk about. California has had it. Other states have had it. They rarely use it. They

only use it really when it's a recalcitrant person who is really going to cause problems. So that's the type of thing we need to talk about.

I think the operator training, that can't be a bad thing to train operators, really. That's part of what we do when we do inspections. We go out and a lot of our inspectors are really compliance assistants. But this makes it an annual requirement.

We have 2,600 owner/operators. If we have to do it every year, and then if you have two or three or five people that you have to train per facility, you are talking about 10,000 people getting trained every year and keep track of it. So that's a --

CHAIRPERSON CLEMENT: That's a big responsibility.

MR. MC NEELY: So we are hoping it would be some type of Internet thing or self-certification, something that that we could track. So, it could be really a very onerous program, or it could be less, and we are going to have to get with stakeholders in other states and figure out how they are doing it.

The operator training requirement doesn't come into play for a few years out, but the secondary containment delivery prohibition are right here. And it's the secondary containment, we didn't check our records.

Most the tanks going in the ground today over the last year are secondary. They are contained already.

CHAIRPERSON CLEMENT: Would you phase in a requirement for secondary containment if we had one?

MR. MC NEELY: I think that would all depend on the statute and the rule that we pass. That's what we need to talk about. I think it would be probably be a good idea.

CHAIRPERSON CLEMENT: Is there any financial opportunity -- there used to be a loan program and a grant program. Are there any financial opportunities for people with less funds available to upgrade to secondary containment?

MR. MC NEELY: No, there isn't, and that grant funding program, that was like 2001, and that actually went away, and that's where the municipal tank closure program money came from.

CHAIRPERSON CLEMENT: Okay.

MR. MC NEELY: I lost my train of thought, but it's not -- you don't have to get secondary contained if you are an operating system already. New ones going in or if you do upgrades to your lines, and that's what we have to talk about in our rules, how much of an upgrade. If you change a foot of a line, you have to change all of your lines, or, I mean, that's the tough thing we need to

talk about. They have guidance out there from the federal level, but we need to talk at a state level, what does our requirement exactly mean.

CHAIRPERSON CLEMENT: But there's always those issues relative to the owners and operators. What about your funding, will you need additional funding to run the program either from EPA or from the State itself?

MR. MC NEELY: That's the issue. Right now the states, almost all 50 states are saying the same thing. This is a nonfunded mandate, how are we supposed to do this. The program has been around since 1986, and all of a sudden you are adding all these new requirements. So that the federal government is trying to give extra money, a few hundred thousand dollars to help develop these programs, but really there is no long-term -- you get annual grants. Sometimes they will be biannual grants, two-year grants, but after that it depends on what Congress does. So, really, there is no commitment, actually, to fund the program.

So it comes down to the State will have to have more funding. We have to do three-year inspections, which currently -- history of the program, we've been probably doing it maybe four years, three to four years, depending on our staffing, but now we have to do it every three years. Our database needs, our requests, however many

tanks, so there is more resource needs. And the training program is what really scares me. That could be -- the minimum, it would be a few people trying to track 10,000 --

CHAIRPERSON CLEMENT: 10,000 people.

MR. MC NEELY: -- in developing, actually testing and looking at requirements. So, there going to be more needs and that is why I think part of this is through the summertime, the stakeholder group, I think we need to look at that maybe at the same time to go through the legislature.

CHAIRPERSON CLEMENT: Your stakeholder group, have you defined the participants, because there is a Commission, and many of the Commission members might also be considered stakeholders, how are you going to manage that?

MR. MC NEELY: I think it's going to be the same issue with the MNA rule, probably post it as a UST Policy Commission meeting/stakeholder meeting, then if Policy Commission members don't show up, it's okay, it's not a Policy Commission meeting, it's just a stakeholder meeting.

CHAIRPERSON CLEMENT: If we have enough notice, or whoever can get the information out and maybe work together a little more closely.

MR. MC NEELY: Ron Kern will be the point person on this one, so we are going to be probably coming up with a schedule and try to develop the stakeholders. I want it to be an open meeting, too, not just invite certain people. I would like everyone to show. The more the better, personally. I think it would be better to have true owner/operators there, rather than just, you know, consultants, because they're the ones that really have to implement the day-to-day compliance stuff.

CHAIRPERSON CLEMENT: And they should be aware of what's coming down in the future. Thank you.

MR. MC NEELY: You are welcome. I think that's it for the program update.

CHAIRPERSON CLEMENT: Any other questions or comments from Mr. McNeely? No?

Let's move, then, to the corrective action monthly update with Mr. Drosendahl.

MR. DROSENDAHL: I'm Joe Drosendahl, the manager of the Corrective Action Section.

In your packet, you have all the numbers for the Corrective Action Section. To date we've closed 84 percent of all reported LUSTs. That seems to be slowly creeping up still. Right now we only have 21 reports in-house that are requiring a review. That's been staying pretty constant over the last year or so.

And we have the data on the municipal tank closure program. That's moving forward. We've removed 119 tanks from the ground to date.

We're working, still working on the Route 66 Initiative, and as Phil McNeely said, we're still working on the NFA/MNA Rule.

There is no new information on the Tier II software. Hopefully next meeting I will have some more news on that.

We haven't lost or gained any people over the last month, so that's good. And that's all I have to report.

CHAIRPERSON CLEMENT: I just have one question. You started with, it's slowly creeping back up the number of open versus closed UST sites?

MR. DROSENDAHL: No. The number of closed sites is creeping up.

CHAIRPERSON CLEMENT: Okay. That's what I thought you were trying to get to. I misunderstood. Thank you.

MR. DROSENDAHL: You are welcome.

CHAIRPERSON CLEMENT: Any other comments or questions?

Let's go on to the -- we don't have any risk assessment and Tier II modeling update.

Okay. The SAF monthly update with Mr. McNeely.

MR. MC NEELY: The SAF monthly update. July is coming around again, and every year we do the cost-of-living increase for July, so this year, based on the Bureau of Labor & Statistics Producer Price Index, Finished Goods, Less Food and Energy Not Seasonally Adjusted Index -- I'm sure you didn't get that.

CHAIRPERSON CLEMENT: Say that again slowly.

MR. MC NEELY: It's a 1.5 increase that's based on the Annual Bureau of Labor & Statistics Producer Price Index for Finished Goods, Less Food and Energy Not Seasonally Adjusted Index, so we're increasing all the cost schedules across the board by 1.5 percent. It will be effective July 1st. We're not adding any new language. We're not adding any new cost schedules. We're just doing our annual adjustment to 1.5 percent. So you will see -- it will round up, it's over a dollar round up. We don't have pennies in there, so to the next dollar.

CHAIRPERSON CLEMENT: That will be July 1st when that becomes effective?

MR. MC NEELY: July 1st, right.

CHAIRPERSON CLEMENT: And that will apply to any work performed after July 1st?

MR. MC NEELY: No. It actually applies -- I believe the way Senate Bill 1310 ended it was -- when the

application is received, it will be the new cost schedule because we didn't want to have multiple cost schedules, so this will be an extra $2, or something, whatever the 1.5 percent is.

CHAIRPERSON CLEMENT: Thank you.

MR. MC NEELY: If you pull out your graph, the colored ones for SAF, you see in April -- April was the first time that we actually received more applications than we reviewed in a long time. We received 96 applications and reviewed 91, but it was close.

But if you look at the total numbers beneath that, we have total active applications, 217, 15 over 90 days, 22 less than 90 days, so still we are doing okay with that.

Then the appeals, turn to the next page, we've had 28 in April informal appeals and we made 29 informal determinations in April. In April, for formal appeal requests, we had 14 and we only made 7 determinations, so that's going the wrong direction. So we have 7 more requests for formal appeals than we actually made determinations.

But in general, we've been keeping up pretty well, and we're paying out -- I don't have those actual numbers, but I think this may be our record year for actual payouts, which is a good sign. We want work to be

happening. So we're having less and less LUST numbers, open sites, but we're paying out more, which means a lot of work is being done on these sites that we actually have open.

CHAIRPERSON CLEMENT: Good.

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

CHAIRPERSON CLEMENT: Is there any reason that the trends are going differently on your appeals as far as the formal appeals?

MR. MC NEELY: I have no idea why that happens. It seems like it goes in cycles up and down. We haven't changed anything. We haven't really been notified or noticed anything that is happening that is causing more formal appeals or less.

CHAIRPERSON CLEMENT: Thank you.

Any more comments, questions of Mr. McNeely?

Okay. We do an efficient meeting. There is no wait.

Financial Subcommittee update. This is very quick. Andrea Martincic is not here. There was no Financial Subcommittee meeting, so there is nothing to report. That's very easy.

The Technical Subcommittee update. Mr. Gill was planning on being here. He had some last minute things.

He called me last night, actually, and was not able to make it here, so Phil McNeely and myself participated, and I'd be happy to share with everyone the report out, if that would be okay with you, unless you want to do it.

Okay. We did have -- in light of the fact that there will be requirements for all subcommittees in addition to commissions to have official meeting minutes, I did official meeting minutes for that subcommittee.

There were three commission members present. It was Mr. McNeely, myself and Mr. Gill. We had -- I thought it was a very open and interesting discussion. Personally, I thought it was a good use of our time.

The two main areas that we talked about were the -- well, three areas, the No Further Action and Monitored Natural Attenuation Rule, and then the need for further characterization of older sites, and then the Tier II risk screens versus evaluation issues.

And so there is two pages of meeting minutes, and that was in your packet, and I also sent them out individually to everyone, so you should have gotten them. Let's do the rule last because that's actually some action that we are hoping to take today.

There is quite a nice discussion about, if you have an older site that hasn't had recent work performed on it and you are in the process of implementing the next

phase, particularly a high-end next phase, such as remedial action or corrective action phase, and if there is uncertainty about the current status of the site relative to its characterization, and you are not sure whether additional sampling will be necessary or not, it is advisable to request a facility meeting and clarify what the agency requirements are going to be and what your recommendations would be relative to further characterization.

So that was agreed upon during our meeting, that there would be a notice placed on the TPD bulletin board. We have language that will be placed on the TPD bulletin board that came in our packet. I haven't seen that yet.

And that language is, quote, "Before submitting a corrective action plan or a remediation pre-approval work plan to ADEQ, it may be reasonable and cost effective to collect additional soil and/or groundwater samples if the last analytical results are not current and may not reflect current site conditions. A facility meeting can be requested to discuss this issue with the Department."

So, I think that's pretty clear. One of the things that came up in our meeting was sometimes project managers are more reluctant to have facility meetings and, if that happens, what I was told during that meeting is, move it up line, because if you really have an issue that

needs to be clarified before you do your next level of work, you really need to have it clarified. And I even heard Mr. McNeely state that if you had to, you could move it all the way up here, so, he would prefer not, though.

MR. MC NEELY: But I'm sure once it gets to Bill Engstrom or KD, the two unit managers, they will have a facility meeting.

CHAIRPERSON CLEMENT: Okay. But, you know, this isn't to waste anybody's time, this is to expedite things and to save confusion, and as the SAF moves to the wayside, it is important that people are on the same game plan, so I really appreciate this language. I don't have any comments or changes that I would make to this language.

MR. MC NEELY: We will post this language, then.

CHAIRPERSON CLEMENT: Does anybody have any further comments or anything?

Okay. It's just clarification. It's not really policy, so we don't -- it's not really policy. We don't vote on it. We could vote on it.

Okay. The fourth issue or the other issue that we talked about that will be very quick to discuss is the Tier II Risk Screens versus Evaluation, and this was -- we had some missed, I think, actually communication or information about what the real issue was.

What the real issue apparently was is sometimes to get the best cost effective remedy, one does a preliminary risk assessment using the Tier II software to determine if the site is going to pass through a risk process or if you are going to have to go to an active remedy.

When you do that preliminary risk assessment, some people call that a risk screen, the cost for that preliminary risk assessment has not always been funded by the SAF for the level of effort necessary to do it, because some sites are more complicated and more data needs to be added and the data manipulation itself can take some time, not just the Tier II screen. I think that's really the problem statement that we went through. I don't think there was much more to it than that.

The things that we came up with that appeared to be an old issue, it appeared to have been resolved, there is no language called risk screen or risk evaluation in the rule or in the cost schedule or anything.

There is the term "risk assessment". Right? So what we decided is not to create any other kind of policy statement or guidance because we didn't want to build language that didn't exist in the program, and that this needs to be handled more on a case-by-case basis. But I think the agency's aware that there could be some sites

that require more levels of effort to complete a preliminary risk assessment, which would mean it would cost more.

Is that fair.

MR. MC NEELY: That sounds fair.

CHAIRPERSON CLEMENT: So we're not going to take that any further. There will be no bulletins or anything like that on that one. That's where we ended up with that.

Let's see. Then the final issue is really the more significant issue that we talked about. We had a good discussion about the draft language for the rule, and this is just a summary of the things that we talked about. I don't think we really need to go into much depth about that.

But the two issues that came up that seemed to be issues that were of concern to the stakeholders that were present. The first one was how do you exit the program. If you applied and you're part of the process and, for whatever reason in the future you decide I don't want to be part of this program anymore, there is a way for the agency to get you out if you don't do certain things, but there is no way for you to get yourself out.

So one of the ideas was that we would suggest that there be some exit language in the rule for the

owners and operators, stakeholders to get out themselves.

Any other -- I mean, let's just talk about that one item itself. If there is anything additional?

MR. O'HARA: What was DEQ's position on those two issues?

MR. MC NEELY: We have the language in there. If information was inaccurate or misleading, we can actually kick you out of the program, or, I'm not sure, we didn't say fraud or anything like that. Do you have the language? Misleading, inaccurate or --

CHAIRPERSON CLEMENT: You've got mechanisms --

MR. MC NEELY: That's correct.

CHAIRPERSON CLEMENT: -- to kick them out, but there is no mechanism for them to voluntarily get out.

MR. MC NEELY: There is no mechanism if the owner or operator wants to say, I don't want to be part of this program anymore. Our position initially was, if they do that, why would they want to do that because they have to pay on their own nickel, or they could do it anyway, because basically they're just getting out of the program. They're getting funded by the MNA, but there is no language to do that, maybe somebody wants to clean up very quickly because they are trying to sell the property, or something like that.

So we're going to add in the same areas, it would

be like A, if you give us specific information to the Agency, then we can kick you out, or if you want to withdraw on your own, you just add like a couple of extra sentences, and it will be their nickel, really, to do the cleanup after that point.

CHAIRPERSON CLEMENT: But there could be cases where there is a property transaction and they want clean closure and they want to get it out of it right away. I don't think it's detrimental to the program.

MR. MC NEELY: Personally, I think if the owner/operator wanted to do that, they could do that without pulling out, that way they could still be in the program and monitor their cleanup work.

CHAIRPERSON CLEMENT: They will always be in the program.

MR. MC NEELY: May not be funded by the program. That's one of the bigger issues.

CHAIRPERSON CLEMENT: That's kind of a separate thing, you know.

MR. MC NEELY: Okay.

CHAIRPERSON CLEMENT: So, do you understand what we're talking about with that? It doesn't make sense, looking at it from our perspective, it's why would anybody want to get out, but there will be times because of property transactions. That's usually what happens.

MR. FINDLEY: So, if they opted out, then they would have to sign a statement saying that they assumed all the responsibility for any future cleanup on that property?

MR. MC NEELY: We didn't go into the detail, but they have to write a letter asking -- requesting to get out of the program, and then we would probably respond saying, hey, you are out, and we would probably have a letter saying you are out of the program, you are liable for all cleanup.

CHAIRPERSON CLEMENT: And then you may want to think about what language you craft in the rule to make this important point, but they're always subject to the program regardless of what aspects of the program they're in.

So, you know, you've got an attorney. I don't know what the right way to do that is. It is a good point.

MR. MC NEELY: Okay.

CHAIRPERSON CLEMENT: And then the second issue, if we're done with that one, was there is actually a robust public participation component of the rule, because basically what your -- some of the aspects anyway -- what you are saying is we're going to leave contamination in place that's above aquifer water quality standards in

aquifers in the State of Arizona, which has not really been done much before in the State.

And typically where I think this is going to happen is more than often is to where you have commingled coordinated plumes, large municipal areas that are contaminated where little bits and drabs of petroleum contamination are not going to make any difference, frankly, technically on the public policy effective long-term. My two cents on it.

But with the public participation components, there was provisions, there was notice to those parties that may have a financial impact from a UST, a LUST closure, and that is the WQARF PRPs, the CERCLA PRPs, the RCRA PRPs, if you've got them, the voluntary parties.

This is other cleanup program that we'll still be obligated to clean up these same areas and may have to deal with the remaining petroleum contamination. And I have a couple of those sites that I'm working on and sometimes you get great information from the UST program and the UST project managers and the UST owners and operators, and sometimes you cannot find anything out.

So, with that background, it was my suggestion that the public participation notice be expanded to include those parties that would have a major potential obligation, either relative to including that contaminant

in their own cleanup or relative to their cost or their analysis that they're going to have to do in the investigation of these building studies. So, anyway, that was the background behind it.

Ms. Foster, do you have any comments on that?

MS. FOSTER: No. It looks wonderful.

CHAIRPERSON CLEMENT: I know that's going to be a little bit more of a problem with the agency, but all of these sites now, either in WQARF and CERCLA, those parties are well identified. Do you know what I mean? They're not unknowns. There is not a lot of research the agency is going to have to do, and typically your public participation notices include the PRPs and the WQARF program and the CERCLA program, so if you can get your lists together, it really shouldn't be that burdensome I don't think.

MR. MC NEELY: Yeah, I don't think it will be burdensome. We are adjusting our rule language to put that in. The intent is everyone knows at least that needs to know we are not trying to not notify people.

CHAIRPERSON CLEMENT: Does anybody have an opinion or a comment on that? I drafted a --just because it seemed like we had very good consensus at the Technical Subcommittee meeting, I drafted a letter to the Director so that we could move forward with this in a vote today if

we felt that it would be appropriate.

So, what I would like to propose is that we take each issue separately in this letter, both issues together in this letter, and see if I have a motion to approve the letter to the Director.

MR. O'HARA: I move that we approve the letter as written, the recommendations on the Technical Subcommittee.

CHAIRPERSON CLEMENT: Is there a second?

MS. FOSTER: I will second it.

CHAIRPERSON CLEMENT: All in favor?

(Chorus of ayes.)

CHAIRPERSON CLEMENT: Anyone opposed?

Okay. Great. I will get this rule letter out -- recommendation letter to the Director this week so he will have that.

MR. MC NEELY: I guess you will need a published on.

CHAIRPERSON CLEMENT: Yeah, I didn't have a date. I didn't have that actually, that's why.

MR. MC NEELY: No. Joe will have to get whatever date.

CHAIRPERSON CLEMENT: Oh. We can go all the way back to the original. Oh, January 4th. Thank you. I didn't go all the way back to the original. I just did

not have it in my file.

Okay. Great. Annual report, No. 7.

I drafted an annual report. That's always a sore point with me. I'm sorry you guys. It takes so long to get information from anyone, including the DEQ. So we got it done.

I've sent it to -- usually what I do so everybody knows is I take input from the subcommittee chairs. I get input from the DEQ. I draft it. I send it first to the subcommittee chairs and DEQ because I want to make sure that I've incorporated their information properly, and then I do a redraft, and then it goes out to the Policy Commission, so that's the way that it goes.

This time, though, just so you know what happened, there was a section that was highlighted in yellow. That was a piece that I had apparently received from Hal Gill sometime ago and not known I had received it. So, I had gone through the process of preliminary review, and then he said, oh, you forgot this paragraph. So, that's why that paragraph was highlighted because neither of the subcommittee chairs nor the DEQ had seen that paragraph before, and I wanted to make sure you knew where it was.

So, did everybody have a chance to read and review the annual report? Are there any comments or

discussions? Okay.

Is there a motion to approve the annual report for submission?

MS. FOSTER: I motion that we approve the annual report prepared by the Chair and submit it.

CHAIRPERSON CLEMENT: Okay. Is there a second?

MR. O'HARA: I will second it.

CHAIRPERSON CLEMENT: All in favor?

(Chorus of ayes.)

CHAIRPERSON CLEMENT: Anyone opposed?

MR. MIKITISH: Joseph Mikitish. I'm going to abstain just because I haven't had the background on that particular document.

CHAIRPERSON CLEMENT: Passed. It still works. We are getting all our work done today.

Okay. Next one is the status of the Policy Commission member appointments with Mr. McNeely.

MR. MC NEELY: The status of the Policy Commission Member appointments. You probably received a letter. We have new members that are being appointed. They're not officially members until they actually fill out the paperwork and send it in and take the oath of office.

And one will be -- I will list them out. Cathy Chaberski, and that's going to replace Theresa's chair.

It was at the request of Theresa that we find someone. Cathy is from Glendale. She used to be the ground field coordinator and the VRP unit manager at DEQ. Now she's environmental -- she does ground field work. She has a couple of USTs. She's in Glendale.

MR. FINDLEY: Phil, did you want to spell her last name?

MR. MC NEELY: Let me look. I can find it. It's Catherine Chaberski, C-H-A-B-E-R-S-K-I.

So that's a new member that will be -- probably the next time we meet will probably be here.

The next one is Theresa Kalaghan. That's K-A-L-A-G-H-A-N. She's an environmental consultant.

And Hal submitted his resignation if we can find somebody else, so I guess next time Theresa will probably be on the Commission.

CHAIRPERSON CLEMENT: Who does she work for?

MR. MC NEELY: SECOR, environmental health, and she does Chevron, Arco. Now she has Arco, 7Eleven, and does a lot of environmental consulting, a lot of UST work.

Karen Gaylord was moved from the small owner/operator to the environmental attorney position.

Bill Bunch from Circle K is replacing Myron Smith for the large owner/operators and Circle K owns about 1100 tanks in Arizona, so they own about 15 percent of all the

tanks.

CHAIRPERSON CLEMENT: Oh, that's a big stakeholder.

MR. MC NEELY: 1100 out of 7,600.

CHAIRPERSON CLEMENT: 15 percent.

MR. MC NEELY: That's a guess.

MS. FOSTER: Do they own them or rent them?

MR. MC NEELY: They own them now. They bought them from Conoco Phillips, so they actually are an owner/operator, which is good.

CHAIRPERSON CLEMENT: Very good.

MR. MC NEELY: Then we have one more person, and this is a new name. He's the City Manager of Globe. They have a small -- they have a system. So his name is Manoj Vyas. He's our small owner/operator.

CHAIRPERSON CLEMENT: Could you maybe spell that?

MR. MC NEELY: Yes. Let me see. M-A-N-O-J, Manoj Vyas, V-Y-A-S. I think he's Swedish or something. But he's the City Manager for the City of Globe and they own a tank and they have a LUST number, so he was very excited about doing that.

So, so far those are the new members, and I think Jon and you guys, Gail, did you receive yours?

CHAIRPERSON CLEMENT: I did receive it immediately.

MR. FINDLEY: I don't think I've received a letter yet.

MR. MC NEELY: Did you receive nothing from Arizona?

MR. FINDLEY: No.

MR. MC NEELY: Okay. I'll check.

CHAIRPERSON CLEMENT: I received my letter last Friday, so you should be getting it pretty soon.

MR. FINDLEY: It may be.

CHAIRPERSON CLEMENT: I was shocked that it turned around given the length of time this has taken.

MR. MC NEELY: So, I think the next meeting, we probably should recognize all the members. A lot of them are absent right now, but we should recognize all the good service that Theresa, Hal and Myron --

CHAIRPERSON CLEMENT: People have really, really done a lot of work.

MR. MC NEELY: Theresa, you've been on since '98, haven't you?

MS. FOSTER: A long time.

MR. MC NEELY: I think since we started.

CHAIRPERSON CLEMENT: This Commission would not function without the quality of the people that have been on it and the willingness to participate and to do work, and I can't tell you all how much that's meant to me in

this role.

It's going to be a transition, and we are going to miss you guys, but we really appreciate your contribution, and at the next meeting we will decide when the next meeting will be.

Could we also get a list, perhaps, and with contact information so that I can build a distribution list and make sure that now we inform these people to when the next meetings going to be and all of that?

MR. MC NEELY: Right. And we probably should have -- we probably should talk to them individually to let them know what to expect before they show up.

CHAIRPERSON CLEMENT: Yes. Once we decide when our next meeting is, you can call them and I will call them and make them feel welcome and know what's going on. That would be a good idea.

But I think that's a step in the right direction because people like Myron hasn't had tanks for a while and it's really not that interesting any more so much.

Good. Thank you.

MR. MC NEELY: You are welcome.

CHAIRPERSON CLEMENT: Any comments or questions beyond that? Okay.

I need to do the general call to the public and see if we have any other -- yes, Mr. Vannais.

MR. VANNAIS: Leon Vannais. There is a rule package that's going through right now that we commented on sometime last week that might have an impact on the UST program and it deals with Office of Administrative Hearings. The rule change will allow the Department to hold requests for formal appeals and not forward them to the Office of Administrative Hearing if the Department finds that the letter that's being appealed is not an appealable agency action.

I think for the SAF program with the SAF rules, it's pretty clear as to what is appealable and what is not and how you appeal that.

For the UST Corrective Action Section, the Policy Commission may want to look at reviewing that rule, seeing how it's going to impact the program, what potential documents would not be considered appealable agency actions, whether that would be compliance documents or NOVs, things like that, or if there is other -- is there another world of documents out there that the department considers a nonappealable agency action with the UST program.

So we've kind of missed the boat a little bit on this, but it is going through GRRC. The terms have to be responded to, and I think maybe the Policy Commission should at least take a look at this to see if it does have

an impact, and that's all I have to say.

CHAIRPERSON CLEMENT: Thank you, Mr. Vannais, I appreciate that.

Any other general public comments? We can't -- as part of the public process, we can't really address public comments unless they're part of the agenda and obviously that wasn't, but we can address them to the point of including them if we think it's appropriate in our next meeting. And I definitely think we should try to get a copy of that rule and take a look at it and see if the Commission would like to do anything formal with it or not. That would be a suggestion I have for the next meeting. It may not be timely, but because I'm not sure when we're going to have the next meeting, but I would make that as a suggestion in the next agenda. Okay.

As far as summary of meeting action items, I will send out the letter to the Director regarding our suggestions for the NFA/MNA Rule.

ADEQ is going to compile and prepare a list of the new Commission Members, and both ADEQ and I will contact them individually before the next meeting personally and make sure that they are informed about the process and made to feel welcome, et cetera.

Those of us who have gotten reappointments, it would be up to us to fill out the paperwork and get that

notarized and sent back in before the next meeting, hopefully, so we're officially back on the board.

And then, Mr. Findley, if you find that you don't get that paperwork, I would contact Mr. McNeely directly.

MR. FINDLEY: I will do that.

CHAIRPERSON CLEMENT: Because I've already received mine.

Let's see what else we have.

I don't recall anything else that we had as a specific action item.

Did anybody else capture anything?

MR. MC NEELY: Send out the annual report.

CHAIRPERSON CLEMENT: Oh, today. Yes, I will send out the annual report.

MR. MC NEELY: Do you send that to us and we send it out on behalf of the Commission?

CHAIRPERSON CLEMENT: What you all -- because we don't have -- you are our administrative support.

I will draft the actual letter. I will make original signatures to each of the legislatures, governor, and all those folks, and send that in an actual physical envelope to you, and I usually send it to Cynthia if that's the right person.

MR. MC NEELY: That's right.

CHAIRPERSON CLEMENT: And then you take and

compile -- I will make sure you have the final draft, and then you guys can compile the attachments and the report as a report, then all you have to do is slap my compiled cover letter on it.

MR. MC NEELY: Okay.

CHAIRPERSON CLEMENT: And I will get that done before the end of this week, and I will date those letters June 1st, 'cause I will be out of town for several weeks after this so --

MR. MC NEELY: And you want the Policy Commission to have a hard copy of all that sent to them?

CHAIRPERSON CLEMENT: Usually we do have a hard copy made for everybody for the next meeting.

MR. MC NEELY: Okay.

CHAIRPERSON CLEMENT: Or you could do it PDF and send it out.

Does the Commission have a preference on that? Do you want hard copy or do you care?

MS. FOSTER: PDF sounds wonderful.

CHAIRPERSON CLEMENT: I definitely want a hard copy, just so -- because I keep a record of those. It's the work -- even though you also have a copy of it, it is just one of those things I will keep in my records.

MR. MC NEELY: Okay.

CHAIRPERSON CLEMENT: Anything else that we need

to cover?

Any other agenda items that we need to add that wouldn't naturally come from what we discussed today or that would be new issues for the next time?

I am going to be out June -- I'm gone the next June meeting scheduled. I don't want that to hold us up, though, if we need a June meeting. The only time we might need a June meeting is looking at those rules, and I just can't -- I just won't be here. Does anybody --

Well, you're out of here. You don't care. Look at your face. You are like, what do I care.

Do you have an opinion, Mr. O'Hara?

MR. O'HARA: I'm not going to be here also at the same time. It's on June 27th. I will be out of town.

CHAIRPERSON CLEMENT: Mr. Findley?

This is kind of the core group. If I don't get these folks, then there's probably not a point, you know.

MR. FINDLEY: I would be available, but if there is not a need for a meeting, that's fine.

CHAIRPERSON CLEMENT: Let's tentatively say that the next meeting is going to be in July. I will try to get a copy of those rules and take a look at them, and if it seems -- what I would suggest is our tentative meeting is July. We will get a copy of those rules sent to Commission Members. If there is some movement from the

Commission to move that ahead of July, then we will get another meeting scheduled and hopefully we will have enough Commission Members with continuity to pull the meeting through, because, you know, new people have to get a little bit grounded.

MR. FINDLEY: So that's the fourth Wednesday?

CHAIRPERSON CLEMENT: It's the 27th, I believe, of June was the original scheduled next meeting. The July meeting, does anybody have that with them?

MR. FINDLEY: The fourth would be the 25th.

CHAIRPERSON CLEMENT: I think the 25th in July. Yeah. And then the other thing is, I will definitely be looking at a volunteer to take over the chair position of the Commission, so, anyone who's interested of the two of you that aren't going to be here next time, think about it. I've been doing this for three years. I think I've had my time.

Anything else we need to cover today, any other comments or questions?

Thanks everybody for being here. Appreciate everybody's participation, and that is the end of the May --

MR. MIKITISH: Madam Chair, I'm not sure I brought a letter, but I do have a letter from the Attorney General appointing me as the alternate to Ms. Huddleston.

So when she's not able to attend, I am officially appointed as her replacement.

CHAIRPERSON CLEMENT: Welcome. We're glad you are here. Thank you.

We're adjourned.

(9:51 a.m.)

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 41 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 23rd day of May, 2007.

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