

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
September 26, 2007
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
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INDEX FOR THE AGENDA ITEMS

| | | |
|----|--|------|
| 2 | | |
| 3 | AGENDA ITEMS: | PAGE |
| 4 | 1. CALL TO ORDER AND ROLL CALL | 4 |
| 5 | 2. APPROVAL OF MINUTES FROM JULY 25, 2007 MEETING | 9 |
| 6 | 3. INTRODUCTIONS AND WELCOME TO NEW COMMISSION MEMBERS | 9 |
| 7 | 4. ADEQ UPDATES | |
| 8 | A. UST PROGRAM UPDATE | 9 |
| 9 | B. SAF MONTHLY UPDATE | 12 |
| 10 | C. UST CORRECTIVE ACTION MONTHLY UPDATE | 14 |
| 11 | D. RISK ASSESSMENT AND TIER II MODELING UPDATE | 25 |
| 12 | 5. DISCUSSION OF RECENT LEGISLATURE AND RULES AFFECTING THE UST PROGRAM | |
| 13 | A. ARIZONA SENATE BILL 1306 | 29 |
| 14 | B. ARIZONA SENATE BILL 1310 | 38 |
| 15 | C. NO FURTHER ACTION (NFA) AND MONITORED NATURAL ATTENUATION (MNA) RULE | 43 |
| 16 | D. ENERGY POLICY ACT OF 2005 | 47 |
| 17 | E. ADMINISTRATIVE APPEALS RULES (A.A.C.R, ARTICLE 2) | |
| 18 | F. OTHER | |
| 19 | 6. FINANCIAL SUBCOMMITTEE UPDATE | |
| 20 | A. ENERGY POLICY ACT IMPLEMENTATION SUBCOMMITTEE MEETING | 51 |
| 21 | B. DISCUSSION OF FINANCIAL SUBCOMMITTEE ROLE AND ISSUES | 56 |
| 22 | C. CONSIDERATION TO EVALUATE OTHER STATES' ASSURANCE FUNDS SUNSET EXPERIENCE | 82 |
| 23 | 7. TECHNICAL SUBCOMMITTEE UPDATE | 85 |
| 24 | A. DISCUSSION OF TECHNICAL SUBCOMMITTEE ROLE AND ISSUES | |
| 25 | B. SELECTION OF NEW CHAIRPERSON | |
| 26 | 8. GENERAL CALL TO THE PUBLIC | 86 |
| 27 | 9. SUMMARY OF MEETING ACTION ITEMS | 105 |
| 28 | 10. DISCUSSION OF AGENDA ITEMS AND SCHEDULE FOR NEXT COMMISSION MEETING | 106 |
| 29 | 11. ANNOUNCEMENTS: | |
| 30 | A. NEXT POLICY COMMISSION MEETING IS SCHEDULED TO BE HELD ON OCTOBER 24, 2007 AT 9:00 A.M. IN ROOM 250 AT ADEQ LOCATED AT 1110 W. WASHINGTON, PHOENIX, ARIZONA | |
| 31 | 12. ADJOURN | 106 |

1 COMMITTEE MEMBERS PRESENT:

2

3 Gail Clement, Chair

4 Philip McNeely

5 Theresa A. Kalaghan

6 William (Bill) Bunch

7 Tamara Huddleston

8 Catherine Chaberski

9 Andrea Martincic

10 Michael O'Hara

11 Manoj Vyas

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1 PROCEEDINGS

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3 CHAIRPERSON CLEMENT: We will call this meeting.

4 The September 26th, 2007 UST Underground Storage Tank

5 Policy Meeting is in session, and I will start with Cathy.

6 We will have a roll call.

7 And for the benefit of everybody, this is the

8 first time we have all of the recently-appointed

9 Commission Members together in the same place at the same

10 time. And so, if you wouldn't mind, as you introduce

11 yourself to just give just a short bio about why you are

12 here and who you represent in terms of the Policy

13 Commission.

14 MS. CHABERSKI: My name is Cathy Chaberski. I'm

15 the environmental engineer with the City of Glendale

16 Environmental Resources Department, and I'm here

17 representing the cities and towns that own and operate

18 USTs.

19 MR. VYAS: Hi, good morning. My name is Manoj

20 Vyas. I'm from the City of Globe. I've been the City

21 Manager there for ten years. And background wise, I've

22 been in management all my life, 30 years, but am a

23 professional engineer, registered land survivor, I've been

24 involved spanning all aspects, but this is an honor to get

25 involved in this aspect of ADEQ and the state legislation.

1 And most importantly, I recognize from the past
2 what you guys are accomplishing, and I'm a registered
3 lobbyist through the state legislation, so I'm aware of
4 1306, 1310, et cetera. You guys have done a great job at
5 the Commission last nine years, I believe, and I'm proud
6 to be a part of your team. Thank you.

7 MR. MC NEELY: I'm Phil McNeely. I manage the
8 UST program at DEQ.

9 MS. MARTINCIC: Andrea Martincic, executive
10 director of Petroleum Marketers.

11 CHAIRPERSON CLEMENT: And Andrea is also the
12 chair, current chair of our Financial Subcommittee, which
13 basically has been set up to handle everything but
14 technical issues.

15 I'm Gail Clement. I'm the current chair of the
16 UST Policy Commission. I've got almost 30 years of
17 environmental experience now, and I am appointed as a
18 representative of the people of Arizona.

19 MS. KALAGHAN: My name is Theresa Kalaghan. I'm
20 with SECOR International, and I'm representing the
21 consultant community. I have been working in Arizona
22 since 1991, primarily on UST projects.

23 MS. HUDDLESTON: I'm Tamara Huddleston, and I'm
24 here representing the Attorney General's Office.

25 MR. O'HARA: I'm Mike O'Hara. I am a CPA

1 representing members of the public with financial and
2 insurance background, and I've been working with the State
3 Assurance Fund since 1992, since its inception.

4 CHAIRPERSON CLEMENT: Could I just add a couple
5 of things. Tamara's also responsible, has a huge
6 responsibility in the Attorney General's Office for pretty
7 much all of our civil attorneys right now. Is that
8 correct?

9 MS. HUDDLESTON: Counsel in the environmental
10 section.

11 CHAIRPERSON CLEMENT: So we're very privileged to
12 have her participate at that level from the Attorney
13 General's Office.

14 And then I also want to add a little bit to Mike.
15 Mike, how long have you been on the Policy Commission?

16 MR. O'HARA: Since its inception. I think it was
17 -- was it '97 or 8?

18 MR. MC NEELY: '97.

19 CHAIRPERSON CLEMENT: So a ten-year member and
20 former chair of the Commission, also.

21 MR. O'HARA: Thank you.

22 CHAIRPERSON CLEMENT: Mr. Bunch.

23 CHAIRPERSON CLEMENT: I'm Bill Bunch with Circle
24 K Stores, Inc., and I represent the large operators of
25 USTs, I believe those that have more than a hundred

1 underground storage tanks in the State, and I'm Circle K's
2 environmental manager.

3 CHAIRPERSON CLEMENT: Thanks everybody. I really
4 am glad to see everybody here. I'm excited about having
5 new, involved, willing-to-work Commission Members.

6 Things are going to be pretty interesting, I
7 think, this year for the Commission. Lots of changes in
8 the program as the SAFs is phased out and as people have
9 to become more dependent on private insurance and other
10 mechanisms, so we're going to be watching them.

11 We will jump down to the actual agenda of the
12 meeting.

13 Before we do that, let me just give you just a
14 few ground rules. This is a formal Commission. We have
15 to conduct ourselves according to the requirements of the
16 State of Arizona and typical Robert's Rules of Order.

17 There is no effort, however, in this Commission to ever
18 shut down conversation, not address, you know, difficult
19 agenda items. So, if you have any issues or any agenda
20 items either from the general public or from the
21 Commission itself, the public feel free to contact one of
22 your Commission Members, whomever perhaps would represent
23 your interests on the Commission. Commission, circuit any
24 agenda items, any topics of discussion through the Chair.

25 That way we don't have, quote, an open meeting thro

1 e-mails. We have to be careful about who we copy on the
2 e-mails, et cetera.

3 And then the second thing I want to mention is,
4 at the last meeting we didn't have all of the new members
5 present, but we did have a nice training that was
6 presented by the Attorney General's Office on open meeting
7 law, conflict of interest, et cetera. So one thing that I
8 would advise the members that weren't able to participate
9 last time, you are required as an appointee of a
10 Governor's Commission to attend the training if you
11 haven't already done so within six months of your
12 appointment, and that's under the State Boards and
13 Commissions web site, and you will see all of the
14 information there. And that will give you a good
15 background.

16 And then we also have Karen Gaylord, who is not
17 here take today, is our representative from the legal
18 profession on the Commission, and we also have Tamara.
19 And so if we have any legal questions, feel free to
20 contact I think either member. They are very, very
21 experienced attorneys.

22 So, with on that note, just to get it started
23 are, let's roll. And we made this a pretty long agenda to
24 give everybody the background, and so this is going -- I
25 like to run these and have them move quickly. We usually

1 are out of here in an hour, hour and a half, max of two
2 hours. Today might be a little longer because I wanted to
3 get all of the background on the table for the new
4 members. Thank you.

5 Did everybody receive the minutes from the
6 July 25th meeting? Did everybody have a chance to review
7 them? Are there questions or comments?

8 Is there a motion to approve.

9 MS. MARTINCIC: I move we approve the minutes.

10 MR. MC NEELY: I will second.

11 CHAIRPERSON CLEMENT: All in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON CLEMENT: Anyone opposed?

14 Okay. The July 25th meeting minutes for the UST
15 Policy Commission are approved.

16 I kind of skipped those around here, but that's
17 okay. It's on the agenda.

18 Let's move to ADEQ updates. Mr. McNeely, would
19 you start with the UST program, please?

20 MR. MC NEELY: Yes. UST program update. In your
21 packet you will see on your first attachment, there is a
22 news release you were provided. It's a new initiative
23 that the UST program is doing for schools, a school
24 initiative. Currently there is 17 schools that have a
25 LUST facility that require cleanup or investigation and

1 it's 43 schools that have underground storage tanks. One
2 thing we've noticed is as the sunset of the SAF is
3 approaching, we were a little worried that some of these
4 schools might not get their sites cleaned up.

5 And then also in our inspections for the UST
6 operating facilities, we noticed that they've had some
7 issues with their compliance. So, just part of the
8 children's health initiative, we really wanted to focus on
9 this little sector of our universe to make sure that they
10 get these sites cleaned up and that they are operating
11 their systems correctly. So we had a press release.
12 We've contacted all the schools. We are doing site
13 visits, doing some compliance assistance just to make sure
14 that they're on target to get these schools cleaned up and
15 these tanks operating correctly. And so far we've had
16 quite a few articles based on this press release.

17 CHAIRPERSON CLEMENT: Do the schools become part
18 of your town and city program or is this something
19 separate?

20 MS. MARTINCIC: Yeah.

21 MR. MC NEELY: It's a little separate. Schools
22 -- and we are trying to push the town and cities, a couple
23 of things with that. You know, we have that Route 66
24 Initiative, but this is almost the same thing that we are
25 doing with small towns, we're trying to go around to small

1 towns and cities. We haven't officially announced that.
2 But we're trying to do the same thing. What we've noticed
3 is that -- it's almost like a mom and pop type of
4 operation. Some of these schools have one guy that does
5 the whole facilities and the sprinkler system, and they
6 really don't have the background to manage environmental
7 cleanup.

8 And the same thing with some of these small
9 towns, same thing we've noticed, one person may be in
10 charge of a lot of different duties and they don't really
11 have the expertise to do cleanup, so we are just trying
12 focus to make sure no one's left behind.

13 It goes the same with the mom and pops, too,
14 we're going to try and push that real hard, too. So,
15 State Leads, we're more than willing to put these
16 facilities in State Lead if they are not technically
17 capable. They have to make that determination if they are
18 not technically capable. But the main issue we have with
19 State Lead is we don't have unlimited resources of project
20 managers, because we have to put that out for bid. It's a
21 long process. Then we have to manage our projects, and we
22 are getting a little overloaded right now so we need to
23 hire some more Hydro IIIs to manage these projects.

24 CHAIRPERSON CLEMENT: Do you still have
25 sufficient funding, do you think? It's staffing that you

1 are limited by.

2 MR. MC NEELY: Funding is not an issue at all.

3 CHAIRPERSON CLEMENT: How many Hydro IIIs will
4 you be looking to hire?

5 MR. MC NEELY: Currently we have four Hydro IIIs
6 in the State Lead Program. We think we need two more.

7 CHAIRPERSON CLEMENT: So get the word out, two
8 more Hydro IIIs.

9 MR. MC NEELY: Plus we need more Hydro IIIs in
10 other SAF and Joe's corrective action group, so we're
11 looking at probably four Hydro IIIs for the division.
12 That's a constant, we've been constantly looking. It is
13 just challenging to find.

14 CHAIRPERSON CLEMENT: What's the starting salary
15 for Hydro III?

16 MR. MC NEELY: On the books it starts in the low
17 40s, but if you have experience we can pay up to the 50,
18 51 range.

19 CHAIRPERSON CLEMENT: Thanks. Now we know why
20 you have a hard time hiring.

21 MR. MC NEELY: It's been that way forever. It's
22 better than it was.

23 So, in terms of -- that's the only new initiative
24 I'm going report on today.

25 I will just move right into the SAF monthly

1 update.

2 CHAIRPERSON CLEMENT: Perfect.

3 MR. MC NEELY: If you want to look at the bar
4 graph for the State Assurance Fund. We have two months in
5 here since our last meeting was in July. We have the July
6 handouts and we have the August handouts. In July, the
7 yellow bar, which actually is not in color for you, but
8 the white has 102 applications received. In July we
9 reviewed 117, so we reviewed more than we received.

10 And in August, we received 111, and we reviewed
11 168. So right now our total applications in-house as of
12 August was 200. None of them are beyond 90 days. So we
13 finally got the backlog down. By statute we're supposed
14 to be making determinations within 90 days. We're finally
15 at that point right now.

16 CHAIRPERSON CLEMENT: Congratulations.

17 MR. MC NEELY: September is looking about the
18 same. In September so far, we've already made 89
19 determinations and we've received 68. So we're down to
20 187 in process right now, applications.

21 CHAIRPERSON CLEMENT: Great.

22 MR. MC NEELY: And what's good about that is once
23 we get a handle on the State Assurance Fund applications,
24 we can focus resources on the corrective action side,
25 because we all come from the same pot of money. We can

1 spend the money either managing sites or processing
2 applications. It's all the same people that we can do
3 that with. So, once we get an efficient process to get
4 these applications out the door, we can focus on the
5 schools, the mom and pops, more attention to getting those
6 sites cleaned up.

7 I guess we will go to the next, UST Correction
8 Action with Joe Drosendahl.

9 CHAIRPERSON CLEMENT: Before we do that, I had a
10 couple of questions and I wanted to make sure everybody
11 has a chance to understand the documents that you just
12 sent out, we just received.

13 Did anybody, especially the new members, have any
14 questions on the handouts from the State Assurance Fund?
15 Is everybody receiving their e-mails?

16 MR. VYAS: Yes, we are.

17 CHAIRPERSON CLEMENT: Great. I had two questions
18 actually on the SAF. One is, are you holding applications
19 and saving them up for efficiency purposes for a single
20 site, or are you processing them on a monthly basis now?

21 MR. MC NEELY: We process everything when we
22 receive them. It goes through this process of eligibility
23 first. If he we get -- there are a few consultants that
24 will submit numerous applications on the same facility for
25 the same time period. We will try to put those together

1 and process them as it is the same task; however, that is
2 ending this month because now we get one application a
3 month, so once we get the application, we will just
4 process it.

5 CHAIRPERSON CLEMENT: There will be no saving up
6 90 days, you will try to do it on a 30-day cycle?

7 MR. MC NEELY: Right. And the only time we ever
8 did that is when we had a backlog. We had a backlog let's
9 say a year of applications. What we would do is wrap the
10 same facility and pull like three or four from that
11 facility and review them, because it's a lot easier to do,
12 it's the same work, just get the time frames split out.
13 We've never really held back applications.

14 CHAIRPERSON CLEMENT: And then are you going to
15 send out another announcement to make sure everybody is
16 reminded about the SAF change in terms of a monthly
17 submittal for reimbursement or are you just going to leave
18 that? Have you done enough.

19 MR. MC NEELY: If we receive an application, we
20 will send a letter back saying it's not accepted under our
21 rules, but they will know, have their first time, but they
22 should know we weren't planning on sending another.

23 MS. MARTINCIC: Is it on your web site?

24 MR. MC NEELY: I will have to check.

25 MS. MARTINCIC: Is it an alert or something?

1 MR. MC NEELY: I did a lot of outreach initially
2 with this thing.

3 CHAIRPERSON CLEMENT: I'm sure everybody knows
4 about it, but frankly I'm the one that's not going to be
5 submitting these. I had lost track of when that phasing
6 date was and it's just a suggestion, perhaps you want to
7 put a note on your web site in big print, this is the
8 month it starts.

9 MR. MC NEELY: I think we have something on
10 Senate Bill 1310 on the web site, but I will check.

11 CHAIRPERSON CLEMENT: And then I had one other
12 question, Theresa and I both had, it's regarding, we've
13 had a number of late summer storms. What do you do about
14 power interruptions at remote sites relative to the
15 required percentage of operation period for remediation
16 periods, how do you play off those two things?

17 MR. MC NEELY: You are asking specific questions
18 now, but it's the same issue we've been dealing with for
19 the last decade. If you rationalize why things went down
20 and why it's cost effective, then he we will consider
21 paying for it. :

22 CHAIRPERSON CLEMENT: The minimum requirement now
23 of operations that you want to see on a monthly basis, is
24 it 70 percent or 75 percent? I can't recall.

25 MR. MC NEELY: In our cost schedule we pay

1 100 percent of the cost schedule if you run your system

2 75 percent of the time.

3 CHAIRPERSON CLEMENT: 75 percent of the time.

4 MR. MC NEELY: Personally I like to see it run at

5 100 percent of the time if that's what you are trying to

6 do. But we gave 25 percent leaway for systems that do

7 shut down for some reason or another, power surges, we

8 gave them 25 percent, then after that, we pay a prorated

9 amount. It's not like we don't pay. We just pay the

10 prorated amount.

11 CHAIRPERSON CLEMENT: Then if somebody had a

12 specific situation -- I just know in central Phoenix it's

13 not a UST site, but every time there has been a storm

14 there has been a power interruption in the physical

15 turn-on is required. So that can be a lot of power

16 interruptions, which leads to problems during the summer

17 months.

18 MR. MC NEELY: Right.

19 CHAIRPERSON CLEMENT: But they have an

20 opportunity to explain and then either get a prorated

21 amount or do a satisfactory explanation and potentially

22 get 100 percent?

23 MR. MC NEELY: Right.

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

25 MR. MC NEELY: You are welcome.

1 CHAIRPERSON CLEMENT: Any other questions on the
2 SAF and where we are at with it. Plenty of money?

3 MR. MC NEELY: 52 million in the balance right
4 now. We are still receiving -- even though the cost of
5 gasoline went up, we received about 33 million last year.
6 It has not slowed down, so, Arizonans are still buying
7 gas, still driving.

8 CHAIRPERSON CLEMENT: And you are going -- 52
9 million sounds like an awfully big nut out there. Will
10 there, before the next legislative session, will you be --
11 how do you manage to make sure that that doesn't get
12 tapped in some way, I guess.

13 MR. MC NEELY: Well, you've been reading the
14 papers, we are -- they are anticipating \$600 million
15 shortfall. So, you know, the Governor's come out with an
16 approach how to make up that 600 million, and so far she
17 has not been talking about sweeping any funds. So right
18 now we're fine. We're not offering up the SAF at all.

19 But, currently, you know, I keep track of that,
20 do we have enough money to finish the cleanups that we
21 have. We currently have about 900 releases that are SAF
22 eligible. We have 1300 releases. A lot of those are not
23 SAF eligible because they're either government tanks,
24 state or federal, they are jet fuel or reported after the
25 deadline.

1 So, out of those 900 releases, if you start doing
2 the math, even at 300 or 400,000 per release, it comes to
3 be about 160, \$170 million you need, and the Fund is
4 supposed to run until 2013 at 33 million a year, we have
5 50 million in the back.

6 MS. MARTINCIC: It should be good.

7 MR. MC NEELY: We're good. In the past you see
8 that calculation, and we needed a billion dollars, but I
9 think we are getting down to actually it's looking like
10 we're going to make it with the available funding that we
11 have.

12 MS. MARTINCIC: Is it or this year or next year
13 that you guys submit a formal report to the legislature on
14 that, the finances and how much you need to pay out every
15 one by that cut-off date?

16 MR. MC NEELY: It's September of 2009.

17 MS. MARTINCIC: Nine, okay.

18 MR. MC NEELY: So we've got another year, well,
19 two years, basically. At that point we should have a
20 pretty good handle on how many sites are left and how much
21 money we need.

22 CHAIRPERSON CLEMENT: Great. Thanks so much,
23 Phil.

24 MR. VYAS: Madam Chairman, from the legislative
25 perspective, what we're going to try to lobby is, SAF, the

1 \$600 million shortfall the Governor's trying to make up is
2 basically in the general fund arena, income tax, et
3 cetera, activities. We're trying to classify this and
4 keep it the Special Revenue Fund, which cannot be used for
5 other state purposes, and that is how we plan to try to
6 lobby to preserve it and protect it for the future as
7 well.

8 CHAIRPERSON CLEMENT: Thank you very much. I
9 think we'd all be happy to see that this fund remained
10 relatively if not completely untouched so that it can
11 serve it's intended purposes.

12 MR. VYAS: That's our goal.

13 CHAIRPERSON CLEMENT: We have not voted on this
14 in any way, but as a Commission, I think part of our role
15 is to represent this program and so if the agency needs,
16 you know, additional assistance with that. We are here to
17 help, not just about you, but also to help.

18 MR. MC NEELY: Great.

19 CHAIRPERSON CLEMENT: Let's see. Anything else
20 on the SAF?

21 Mr. Bunch?

22 MR. BUNCH: How many of those 400 non-SAF
23 eligible releases are UST releases that were reported
24 after the termination of eligibility. Do you know
25 offhand?

1 MR. MC NEELY: We've only had 40 releases
2 reported since June 30th in 2006. That was as of the
3 first of month, of September. And out of those 40, we've
4 already closed 10 of those. So there is 30 that are not
5 SAF eligible that need to rely on their FR mechanism.

6 CHAIRPERSON CLEMENT: Okay. Any other questions?

7 MR. BUNCH: Thank you.

8 CHAIRPERSON CLEMENT: Any other questions for
9 Phil, Mr. McNeely?

10 Okay. Great. Then we will jump to Mr.
11 Drosendahl's presentation. I believe you're next.

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

14 In your packet you have the bean count from the
15 Corrective Action Section.

16 For July and August, we provided the number of
17 new releases, and the releases that have been closed, and
18 as of August we are now up to 85 percent of all reported
19 LUST cases have been closed. And we're still just getting
20 in just a very few number of new releases per month.

21 We only have 16 documents currently in-house that
22 are under review. And as of the end of August, through
23 the Municipal Tank Closure Program, we've removed 140
24 tanks. We're still receiving applications, so that
25 program seems to be still moving forward. If anybody

1 knows of any orphan tanks out there, please, you know,
2 contact the cities and counties and have them supply an
3 application.

4 As Phil said, we're currently implementing the
5 School Assistance Initiative. One of my -- the people
6 that work in the Corrective Action Section, Don Spencer,
7 he's going to be the point of contact, so if schools need
8 any kind of assistance, you know, Don Spencer would be the
9 person to contact.

10 The Route 66 Initiative is still moving forward,
11 and as far as I know, it's moving along, you know, the way
12 it should be. Phil in a minute is going to talk about the
13 NFA/MNA rules.

14 Also we are now at full case management, where
15 all open LUST sites have an assigned case manager. If
16 anybody hears about a site and they don't know the case
17 manager, definitely contact us or, if you don't have a case
18 manager, definitely contact us and we will definitely
19 provide one. We are hoping that will help, you know,
20 speed things along if someone has a -- one person to
21 contact.

22 I can't guarantee that your case manager will be
23 the case manager until case closure. Hopefully, keep my
24 fingers crossed, haven't heard about anybody leaving yet.

25 But, hopefully it will -- the number of case

1 managers will, you know, remain relatively small for each
2 site.

3 CHAIRPERSON CLEMENT: Mr. Drosendahl, how many
4 sites per case manager?

5 MR. DROSENDAHL: It kind of varies, but it's
6 around 50.

7 CHAIRPERSON CLEMENT: Not bad.

8 MR. DROSENDAHL: That's not bad at all so --

9 CHAIRPERSON CLEMENT: Thank you.

10 MR. DROSENDAHL: Cathy?

11 MS. CHABERSKI: I have a question on the school
12 program. Is this all just public schools, or is it all
13 schools, private, public? Are there any eligibility
14 requirements like that that you know of?

15 MR. DROSENDAHL: Nothing real formal. Basically
16 it's K through 12, you know, basically they're included.
17 ASU, they're really not included, although if they need
18 assistance, just like any UST owner/operator, we can help
19 them, but we are mostly talking about the K through 12
20 types of schools.

21 MS. CHABERSKI: Thank you.

22 CHAIRPERSON CLEMENT: Thank you, Joe.

23 MR. DROSENDAHL: If I can jump into my next
24 session. I do have copies of the revised Tier 2 software,
25 if any of the Policy Commission Members would like a copy,

1 I have some here, so after the meeting I will definitely
2 give those to you.

3 Also in the future if anybody, you know, has
4 questions or wants another copy of the software,
5 definitely contact Jeanene Hanley of the corrective action
6 section and it will also be provided through our Internet
7 site, so --

8 CHAIRPERSON CLEMENT: Excellent. How is it being
9 provided through your Internet site, Mr. Drosendahl?

10 MR. DROSENDAHL: Well, we're currently working
11 with our IT people to actually get it loaded onto our
12 Internet site. I am not a computer person. I'm not even
13 sure where that Internet site exists, but we're having a
14 little delay getting them to, you know, dedicate the time
15 to put it on there, but it should be up there shortly.

16 CHAIRPERSON CLEMENT: Are these the first
17 versions of the actual software that will be available to
18 the public?

19 MR. DROSENDAHL: Yes.

20 CHAIRPERSON CLEMENT: Great.

21 MS. MARTINCIC: Is that something that we should
22 communicate to, you know, or do people know to contact you
23 to get that? I guess is that something that we should let
24 folks know it's now available because I know we've been
25 talking about it for a long time, or should people already

1 know.

2 MR. MC NEELY: We will send an e-mail out on our
3 e-mail list that we to say that we have it available.

4 MS. MARTINCIC: Then they will contact you to get
5 it?

6 MR. MC NEELY: What we'd rather do is wait until
7 it's on our Internet so they can download it themselves
8 because I can't really make 900 CDs. The problem is there
9 is some limits on what's put on our web site, and IT's
10 working through that, so we thought it would be just put
11 on there, but they have some issues they are trying to
12 work out. So we made copies just to hand them out, but
13 typically there is only a handful of consultants actually
14 use the Tier 2, so we will make copies. If they contact
15 us, we will make them a copy.

16 CHAIRPERSON CLEMENT: Congratulations.
17 Cathy?

18 MS. CHABERSKI: What is the revision about or why
19 was it revised?

20 MR. DROSENDAHL: Basically, the Tier 2 software
21 is a software packet that we put together to help UST
22 owners do a Tier 2 risk assessment. We did put out a
23 version, and basically, like any software, there was
24 glitches and everything, and then with the new soil rule,
25 the new soil numbers had to be put in there, so this is

1 just a new version.

2 MS. CHABERSKI: Thank you.

3 CHAIRPERSON CLEMENT: There were, if I could --

4 we have -- this has been one of the sorest points for the

5 Policy Commission over the last two to three years, I'd

6 say. And the software was really nonoperable in some

7 ways, then there would be corrections, then it would be

8 operable. So this is a major accomplishment by the

9 agency. We are really pleased, and we really thank you

10 for bringing the software to us today.

11 MR. MC NEELY: Madam Chair, before you give us

12 compliments, first put it on the computer and see if it

13 works then you can. But --

14 CHAIRPERSON CLEMENT: Before the complaints come

15 in, let's get it compliment.

16 MS. MARTINCIC: That will happen next month.

17 MR. MC NEELY: And I wanted to caveat that, is

18 that we're trying to get out of the software business now,

19 so we are giving this out, but we don't want to update it

20 anymore because the D&E model, not the D&E model, but the

21 John Mennenger model, the vapor intrusion part, that's

22 going to be updated. They're working on updating that.

23 We don't want to have to keep going back. They're trying

24 to update our TPL model. We can't keep going back because

25 we're really not software people. So we're putting this

1 out there right now, but in the future, a year from now,
2 whenever, when the new vapor intrusion model comes out,
3 then consultants will have to run that separately. When
4 we come out with the new TPL model, we'll have to run that
5 separately because we're not going to keep trying to put
6 that in because that just takes too much time and we
7 really should not be in the business of writing software.

8 CHAIRPERSON CLEMENT: It's a very wise decision.
9 Moving forward, but it's nice that you are able to
10 complete what you started, and I think that's a real
11 accomplishment. Hopefully we won't have too many
12 complaints. Thank you.

13 Mr. Drosendahl, is that it?

14 MR. DROSENDAHL: That's it.

15 CHAIRPERSON CLEMENT: Any more questions? I'm
16 sorry, I go in and out of first and last names. Forgive
17 me. I'm not trying to make it -- I'm still learning
18 people's names, so --

19 Okay. We had this presentation at the last
20 meeting, but because so many of these elements are
21 important to the program, we've asked Mr. McNeely to give
22 another update of all of these legislative and regulatory
23 changes that are either in place or on the horizon.

24 MR. MC NEELY: Thank you. Before I jump into
25 this I'd like to introduce Joe. I don't know if you know

1 him, Manoj, but Joe is our section manager for the
2 corrective action side, the cleanup side.

3 And Ron Kern, sitting next to Joe, is the section
4 manager for the compliance side, the people that do all
5 the inspections.

6 Then Al Johnson is in the back. He works for Ron
7 Kern. He does a lot of logistics, but he's Hydro IV, one
8 of our senior Hydros.

9 And, Cynthia, you are way in the back. She is
10 our outreach coordinator, so Cynthia Miller will be the
11 person contacting the Policy Commission and sending the
12 e-mails out.

13 CHAIRPERSON CLEMENT: She's probably the most
14 critical person you need to know, actually.

15 MR. MC NEELY: She sits in the back.

16 All right. So I will quickly go through this. I
17 did not pass -- I passed this out to the two new members.

18 MS. MARTINCIC: I was on the phone.

19 MR. MC NEELY: You were on the phone.

20 MS. MARTINCIC: I will take one.

21 MR. MC NEELY: I didn't make copies for
22 everybody. It's the same agenda item that we had last
23 time. All right. So there's been some legislative
24 changes over the past three years that really have
25 impacted the UST program.

1 I will start off with the Senate Bill 1306, and
2 that's -- you have a copy of this fact sheet. I'm not
3 going to go through the whole thing, but Senate Bill 1306
4 is the bill that sunsets the SAF. So there is deadlines
5 on here. A lot of them have already past, but the next
6 deadline will be June 30th, 2009 is the last day if you've
7 got a work plan to be submitted to DEQ for review, so
8 that's a year and 10 months away. Then June 30th, 2010 is
9 the last day that ADEQ will accept a claim.

10 So that means all the owner/operators out there
11 doing cleanup need to get these sites cleaned up by June
12 30th, 2010, and really you have to give at least a month
13 or so leeway, because you have to fill out the application
14 to get your last invoice. So you have about two years and
15 eight months probably to get these sites cleaned up and
16 get reimbursed.

17 After that point, if you are not either in the
18 MNA program or done with the cleanup, it's on the
19 owner/operator's own nickel, which could be an issue for
20 some if they don't get cleaned up. And that's why we've
21 really been focusing on these small mom and pops and now
22 the schools and cities, because we have money to clean
23 these sites up. We just need to focus and get the sources
24 cleaned up and move forward getting them cleaned up.

25 I think a lot of people just don't have the sense

1 of urgency that they might need to get this done, because
2 if there is free product set aside or contaminated soil,
3 the system needs to be up and running right now to get it
4 to make it. So hopefully in the next year we are going to
5 be pushing these mom and pops and really pushing hard to
6 get these sites cleaned up, or starting to get them
7 cleaned up.

8 MS. MARTINCIC: Phil, to that, do you know what
9 the breakdown in terms of the current -- I think it was
10 what, 900 current releases, how many of those are the
11 small owner/operator, the breakdown?

12 MR. MC NEELY: I don't have that breakdown yet.
13 I'm trying to get it broken down where I can see actual
14 are our groundwater and how many are under remediation.
15 That's what we're trying to do it with our case managers.
16 We're trying to just figure out which ones are the high
17 risk ones, because if you are moving forward with cleanup
18 right now, you're probably okay. But I want to find the
19 ones that actually -- no cleanup is happening and cleanup
20 is required, but it's hard to do that when you have ---
21 even at 900 sites, that's a lot of sites to figure out
22 what's going on, but that's what we're working on.

23 CHAIRPERSON CLEMENT: So, just to repeat that --

24 MS. MARTINCIC: I guess I would just be curious
25 as to how many are and then if there is anything

1 representing petroleum industry and tank owners, if
2 anything, you know, ADEQ can do to get the word out, and
3 let those small operators know that it's time and they
4 need to start moving. I would be glad to help with that.

5 MR. MC NEELY: Okay. And maybe we should do
6 another postcard. We are going to do another newsletter
7 shortly, but I'm not sure if that reaches everybody that
8 it needs to reach.

9 I really think the way to do it is a personal
10 visit and call to every single site that needs to be
11 cleaned up and really sit down say, "You really need to
12 get going on this," but that just takes a lot of
13 organizing and a lot of file review and manpower.

14 CHAIRPERSON CLEMENT: So, your program right now
15 is to assess the 900 sites, determine which ones you feel
16 might be in jeopardy relative to the timing of the cleanup
17 and whether they are small and/or sophisticated enough to
18 actually accomplish the end point?

19 MR. MC NEELY: Right.

20 CHAIRPERSON CLEMENT: Okay. And then as far as
21 outreach, you are going to contact certain pockets of the
22 sub population of the 900 directly personally.

23 MR. MC NEELY: That's what the case managers are
24 supposed to be doing.

25 CHAIRPERSON CLEMENT: Okay.

1 MR. MC NEELY: But they're going through their
2 sites right now. They haven't completed them all yet, but
3 that's our goal to having a case manager assigned to every
4 site. They are really supposed to be making site visits,
5 talking to these people, looking at the file, making sure
6 that something is happening in the right direction to
7 reach our 2010 goal.

8 CHAIRPERSON CLEMENT: And then the third thing
9 that you sort of alluded to was potentially a larger
10 outreach using the resources of APMA and DEQ potentially?

11 MR. MC NEELY: Right.

12 CHAIRPERSON CLEMENT: And that go around maybe
13 sending out a postcard and the revised fact sheet. Is
14 that where we're headed?

15 MR. MC NEELY: Or a newsletter. We've been
16 working on a newsletter. We will include that you really
17 need to get going on your cleanups. And we've really been
18 pounding this drum for three years. I think the message
19 is out because we've had a lot of closures in the last
20 three years, a lot of work being down, but still there is
21 some people out there that don't, I think, want to do it.
22 That's part of the issue, too. And the other is probably
23 they just don't know how to do it. They may have a
24 consultant that's not quite --

25 CHAIRPERSON CLEMENT: Qualified.

1 MR. MC NEELY: Not quite doing what they need to
2 to.

3 CHAIRPERSON CLEMENT: Two years and eight months
4 is not a long time to complete a remediation project. You
5 are on the bitter end right now if you haven't started, so
6 in terms of APMA and getting that word out, I can't
7 overemphasize that you are really at the very edge of
8 accomplishing anything.

9 MR. MC NEELY: Maybe we can write an e-mail and
10 then we could forward it to them, or something like that.
11 I'm not sure if you have an e-mail list that you send.

12 MS. MARTINCIC: I don't know that a newsletter,
13 because I'm afraid that sometimes gets lost. I mean, a
14 one-page, you know, fax may be better than an e-mail.
15 Some of the small folks don't even have e-mail.

16 MR. MC NEELY: Right.

17 MS. MARTINCIC: I mean, they may have it but they
18 just don't use it regularly, you know.

19 MR. MC NEELY: If you have ideas, too, how to
20 reach them.

21 MS. MARTINCIC: Is all that public information in
22 terms of 900, is that something I could get a list and go
23 through and figure out who, if there are any folks that I
24 can contact or is that -- I thought it was. Isn't this on
25 the web site or not? It is not on the web site?

1 MR. MC NEELY: It's on the web site.

2 MS. MARTINCIC: I thought that stuff was on the
3 web site. Maybe I'm thinking of some other letter.

4 MR. KERN: To answer the question, Ron Kern from
5 DEQ, we've got a full LUST list that includes open and
6 closed LUSTS on the web site, so we haven't really broken
7 it out to open LUSTs and closed LUSTs. We hoped to do
8 that the future to kind of meet those goals.

9 MS. MARTINCIC: So it's not something you can
10 print up a sheet on, or not.

11 MR. MC NEELY: I probably can get that printed
12 out, but, I mean, it's a lot.

13 MS. MARTINCIC: Wasn't there a way to put the
14 company name or something like that?

15 MR. MC NEELY: It will be there, it will be the
16 owner.

17 MR. KERN: Ron Kern again. Basically right now
18 with our database, we are working on something which is
19 called a data warehouse, and we'll almost ready to go
20 prime time with that within the agency, and we've got that
21 pretty good. It minds the data very effectively, very
22 efficiently out of our database, so we're able to query it
23 in several different ways. I think in about a month or so
24 we should be able to get that list and feel pretty good
25 about it, because there is also data cleanup that's going

1 on concomitantly with that and concurrently with that,
2 too.

3 So the list you are kind of asking for, which is
4 public as far as we're concerned, we should have that
5 available say more or less in about a month.

6 MS. MARTINCIC: Okay. I will just work with you
7 guys and get a list, then I can try to assist in reaching
8 some of those folks, maybe.

9 MR. MC NEELY: And I wouldn't mind having that on
10 our web site. I think it would be a good resource for
11 consultants to look and start calling these people, too.
12 We need any help we can get.

13 CHAIRPERSON CLEMENT: That was actually thinking,
14 so that somebody who specializes in moms and pops gets out
15 there and do some work and get this stuff done.

16 So, just in follow-up, APMA and ADEQ are going to
17 work together on some form of outreach which may include
18 an e-mail, a fax and/or individual phone calls after going
19 through the list of open sites. And you are going to work
20 those things together?

21 MR. MC NEELY: Well, the individual, yes, but the
22 individual phone calls, that's our project managers doing
23 that.

24 CHAIRPERSON CLEMENT: Yeah.

25 MR. MC NEELY: That's just a matter of business,

1 but we are pushing for that, but, yeah, I will work with
2 APMA on that.

3 MS. MARTINCIC: I mean, some of those might not
4 be members of mine, but I'm sure members are distributing
5 product to them, and if their supplier gives them a heads
6 up that they need to be doing that, sometimes that is
7 helpful.

8 CHAIRPERSON CLEMENT: Good. I mean, the whole
9 point of this program initially was to take care of the
10 mom and pops, and it would be ashamed to have them fall
11 through the cracks at the end.

12 MS. MARTINCIC: We want to make sure their tanks
13 are up and not leaking, otherwise they are not going to be
14 getting deliveries.

15 MR. MC NEELY: That's next.

16 CHAIRPERSON CLEMENT: Any other --
17 Mr. Bunch.

18 MR. BUNCH: I was just going to make a
19 suggestion, for those releases where there appears to be a
20 consultant involved already, there might be a smaller
21 group of individuals to reach out, and it would seem to me
22 they'd have a stake in trying to ensure that their clients
23 are moving forward because that's probably the best way to
24 truly get paid at the end of the day. So, maybe, if we
25 are seeing there is a handful of consultants involved with

1 the majority of these releases that don't appear to be
2 moving forward fast enough, maybe just a phone call to
3 them to say, hey, you might want to reach out to your
4 clients and get them to move forward because they're going
5 to miss their opportunity.

6 MR. MC NEELY: One thing we do is we did regulate
7 owner/operators, so we really like to tell the
8 owner/operators that personally, not necessarily just talk
9 to consultants, even though we are always willing to talk
10 to consultants, we regulate owner/operators. And it seems
11 like some of the consultants that are having issues with
12 their cleanups, it may be their ability or their lack of
13 staffing, so they may have the same issues we have, they
14 just don't have people to do the work. So I think
15 owner/operators need to be aware of that it's their nickel
16 at the end of the day, not the consultants.

17 CHAIRPERSON CLEMENT: What we've done in the
18 past, Mr. Bunch, is the Technical Subcommittee had this
19 massive e-mail distribution list, and anything of
20 importance that would be important to the technical
21 consulting community, typically the Technical Subcommittee
22 chair and he had all of those relationships and all of
23 that e-mail distribution set up.

24 So, as we get into that agenda item, I think we
25 should make that someone's responsibility and to follow

1 that up directly with the consultants from the
2 Commission's level.

3 Okay. Thank you. Any other questions or
4 comments before we move on? Great.

5 MR. MC NEELY: Well, the next on the agenda,
6 Arizona Senate Bill 1310, which became effective this
7 month, September 18th. That was a relatively small bill.
8 The main focus on that bill was to limit the amount of SAF
9 claims to once a month per facility. So if you have
10 multiple releases at a facility, you can only submit them
11 once a month, one claim a month.

12 We've noticed that a high percentage of our
13 claims coming in were multiple claims from the same
14 facility and the work was done pretty much the same time.
15 It was very difficult to review those claims. The appeals
16 were all -- it was very difficult to have multiple appeals
17 basically on the same task that's being done, so as of
18 this month that should stop, and we should have one claim
19 a month.

20 I will jump right into the Energy Act now.

21 CHAIRPERSON CLEMENT: Please, unless there is any
22 questions or comments.

23 MR. MC NEELY: The Federal Energy Act that was
24 past by Congress and signed by President Bush on August 8,
25 2005. Part of the Federal Energy Act had Underground

1 Storage Tank Compliance Act, a small portion of it, and
2 there are provisions in this act that DEQ cannot implement
3 right now because we don't have the statutory authority,
4 so I will go through those provisions.

5 Groundwater protection provision, where if you're
6 within 1000 feet of a water system, you are supposed to
7 have, for new tanks being installed, double-walled tanks.
8 That's one thing that we don't have authority to enforce,
9 but we've been checking all the new systems being put in
10 and they've all been double-walled since the
11 implementation of this act, so I think most
12 owner/operators are doing that anyway just for liability
13 reasons. California has required that for years. So I
14 think it's a spillover from California that all new tanks
15 are being double-walled, but we still need to have the
16 authority to enforce that.

17 MS. MARTINCIC: Do you know definitely now that
18 all from 2005?

19 MR. MC NEELY: We've been checking our data bases
20 and so far all of them that's been reported.

21 MS. MARTINCIC: Good.

22 MR. MC NEELY: Which is good news.

23 CHAIRPERSON CLEMENT: Very good news.

24 MR. MC NEELY: The compliance -- the next thing
25 was a compliance report, we had a focus on government

1 tanks and report to the EPA every year the compliance of
2 all government-owned tanks. The first report was due this
3 year, August 8th, we sent that off, and one thing we
4 noticed, a lot of the tanks out of compliance are schools,
5 and that's what started this school initiative, started
6 looking at things and, whoa, most the tanks that are on
7 this list are schools, and we've been pushing hard to
8 protect children, so we thought it was a good time to
9 actually start the school assistance program. So every
10 year we're going to have to report these out to EPA about
11 the compliance of our tanks.

12 The next item, delivery prohibition. If the
13 system is out of compliance, DEQ is supposed to have the
14 authority to prevent delivery of product to that tank.
15 Right now we don't have that authority. A lot of states
16 do have the authority. California has that authority but
17 we don't, so that's one of the provisions that we will
18 have to change the statute to implement that.

19 Inspections, we are supposed to be on a
20 three-year inspection cycle now. In the past we've hit
21 about 4 to 4.7 years between inspections. We've hired a
22 lot of people in the last couple of years and we're doing
23 a lot of inspections now. We're definitely on track to
24 hit every site at least every three years. And I'd like
25 to do it even more frequently than that, if possible,

1 because a lot of these mom and pops, a lot of these small
2 facilities really -- that's the only training they really
3 get. They don't know how many to use their systems. They
4 get them installed and they really don't know how to us
5 them. So, half of our inspection really is teaching the
6 owner/operator how to maintain their systems, how to do
7 inventories, how to do it to comply with our rules.

8 So, we're pushing that, and it's really important
9 now because all new releases are not State Assurance Fund
10 eligible, so we're really focusing on compliance. In the
11 next few years, we will be more and more in compliance.

12 Operator training is the next big one. The
13 Energy Act requires all operators be trained, and there is
14 three different classes of operators. Establishing the
15 Energy Act, and I don't want to go through all three. The
16 guy on the side actually presses the emergency button, the
17 lowest level and the top level is the person up in the
18 corporate office, the whole thing, so we need to have them
19 trained and we need to have some type of training program
20 and documentation. We need authority to do that.

21 So the three things that we're trying to -- we've
22 had a couple of public meetings on this need already, we
23 need authority for delivery prohibition, operator
24 training, and the double-walled tanks.

25 We have draft language out there. We've had two

1 meetings on that. The last meeting was in August, and we
2 had a couple of sets of comments. Western States
3 Petroleum had comments, the City of Phoenix had comments,
4 and then we're looking at their comments to see how we can
5 change the language. We don't have authority yet from the
6 Governor's office. We can try to pursue this legislation
7 next year or not, and we should be getting that
8 authorization in the next month or so.

9 CHAIRPERSON CLEMENT: So the draft legislation is
10 available on your web site or do you have any legislation
11 drafted?

12 MR. MC NEELY: It's drafted. It's not on our web
13 site right now, but we e-mailed it on everybody.

14 CHAIRPERSON CLEMENT: Did you e-mail it to us,
15 too?

16 MR. MC NEELY: I don't know.

17 MR. KERN: Yes. Ron Kern from DEQ. Basically,
18 Cynthia has the details, but basically everybody who was
19 on our e-mail list, which includes all the Members of the
20 Policy Commission, got the notice of the public meetings,
21 and then at the last meeting we sent out the draft
22 legislation or draft, amended language, proposed language
23 that we had at that time.

24 CHAIRPERSON CLEMENT: And that came out after the
25 last public meeting?

1 MR. KERN: No. That came out before.

2 MR. MC NEELY: It should have been late July or
3 early August.

4 CHAIRPERSON CLEMENT: And if everybody did not
5 receive that, who would they contact to get that
6 information? Cynthia?

7 MR. MC NEELY: Cynthia.

8 CHAIRPERSON CLEMENT: So if anybody on the Policy
9 Commission did not get that e-mail, or inadvertently
10 erased it, please contact Cynthia Miller if you want a
11 copy. Because we may want to, as a Commission, review
12 that before the legislative session and add any comments
13 that we would have as a commission.

14 MR. MC NEELY: We did get some good comments and
15 we are trying to incorporate their comments into the
16 language.

17 We want the No Further Action Rule? No
18 questions?

19 The No Further Action and Monitored Attenuation
20 Rule, that was authorized by Senate Bill 1306. That's
21 part of Sunset Bill. What this rule does is establishes
22 an MNA, a monitored attenuation account, sub account, so I
23 will just give you the background.

24 Since the sunset of the funds happening on
25 June 30th, 2010, there is groundwater sites that aren't

1 going to be able to be closed at that point, so what
2 Senate Bill 1306 does is get rid of the source area, get
3 it done before 2010, which is -- actually the fines are
4 sourced as free product, contaminated soil, once you get
5 rid of the source, the site may be eligible for monitored
6 attenuation, no more active remediation is going on. And
7 indigenous bugs, the bacteria will actually break down the
8 petroleum contamination. But to do that, it may take
9 years after 2010.

10 So to make sure that the owner/operators aren't
11 liable to pay for the abandonment of those wells and
12 monitoring, Senate Bill 1306 really made or authorized DEQ
13 to write a rule as to how we're going to do that, put
14 money on the side. So this rule is out there -- actually
15 the public comment ends this Friday, the 28th. We've had
16 two public hearings, we've had numerous informal meetings,
17 and what this does is once you apply to DEQ and you can
18 show that the source of contamination is gone, we can put
19 the site into State Lead, and we will monitor it and then
20 abandon the wells when we're through with the closure. So
21 this is really a compromise to sunset the Fund, how to
22 handle all the ground work, onsite and offsite, we put
23 them in and take care of them.

24 CHAIRPERSON CLEMENT: And the Policy Commission
25 did this rule, and we did submit I think two very minimal

1 formal comments previously, and if anybody needs that
2 information, just contact me directly.

3 MR. MC NEELY: We did incorporate the comments
4 from the Policy Commission and we've had no comments
5 submitted so far, and we've only got two days to go. So,
6 if we have no comments, we may be able to do the
7 Governor's Legislative Review Counsel pretty quickly, and
8 we could have a rule effective sometime in January. If we
9 get the comments at the last day, that may take us a while
10 to respond to comments.

11 In addition to the MNA portion of this rule, we
12 also have the no further action, or actually the closure,
13 the closure portion of the rule, where we're saying we've
14 had authority since 1997 to close sites exceeding water
15 quality standards, and we had to write rules to do that,
16 so now we put in a provision where, after review, the
17 site characterization reviews, make sure the source is
18 cleaned up and do a public process to notify water
19 providers and property owners and cities and counties, we
20 can close the site, not put it into MNA, just outright
21 close it if we think it's appropriate. Because there are
22 many sites out there that have one or two wells that have
23 exceeded water quality standards on site, no one's
24 drinking the water, could be a first aquifer, so we think
25 it's not really cost effective even to do attenuation

1 monitoring, just to go ahead and close it.

2 CHAIRPERSON CLEMENT: That's going to be a very
3 interesting aspect, a whole new avenue for the state to go
4 into, and it's going to be a very interesting process to
5 watch, I think.

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

7 CHAIRPERSON CLEMENT: Yeah.

8 MR. MC NEELY: The last rule package is the
9 Administrative Appeals Rules, and that is a rule being
10 proposed by DEQ to govern all formal appeals that come to
11 the agency. The way it works, all formal appeals get sent
12 to our administrative counsel, they forward it over to
13 Office of Administrative Hearings, this is just governing
14 how they do that.

15 We had a public hearing about two months ago, we
16 did get some additional comments. We extended the public
17 comment a period, and now DEQ is looking at the comments,
18 and there is two options. One, they may repropose the
19 rule, because there was some issues with the Water Quality
20 Appeals Board. They're thinking that they may need to
21 correct that, or they could submit it to GRRC if they
22 think it is okay, but right now we are still looking at
23 the comments and trying to revise it. I don't really know
24 where we'll go. I think they have until November to make
25 that decision. And that's all I have.

1 CHAIRPERSON CLEMENT: And in November, will you
2 remind us what the outcome of that is? The Policy
3 Commission did not take a formal position on this rule
4 package; however, the Arizona Chamber of Commerce and
5 other industry related groups took a very strong position
6 on this rule package, so it is something I think that
7 Policy Commission members and members of the regulated
8 community want to keep their eye on. There were some
9 very, what appeared to be from my reading, some
10 substantive changes.

11 Thank you. Anything else that you anticipate in
12 the next 12 or 18 months in terms of rule package?

13 MR. MC NEELY: For the tank programs division, if
14 we get authorization from the Governor's Office to change
15 the legislation to enact the Energy Act, we may have the
16 new legislation giving us authority to enforce this, then
17 we may have to revise our rules to give more detail how to
18 enforce it.

19 We are trying to write the language where we can
20 actually comply with the EPA's requirements with the
21 language, and then I think we will probably have to do
22 some more revisions to our rules to actually implement it.

23 CHAIRPERSON CLEMENT: Any more questions or
24 comments for Mr. McNeely on the rules or regulations?

25 MR. VYAS: Madam Chairman, with your permission,

1 may I go back for his expertise. When you talk about 1000
2 feet, we talk about the wells and they talk about the
3 water supply system. Technically a pipe that supplied
4 transmits water could be water supply under the current
5 standard, the pipe is not subject to the surroundings for
6 contamination. Do you -- can you guide my basic knowledge
7 as to what qualifies, is every pipe that is within
8 1000 feet going to mandate a double-walling of the tank or
9 the release potential? Is that the case?

10 MR. MC NEELY: I think the way we're going is all
11 new systems will be double-walled, because --

12 MR. VYAS: Correct. I'm talking about the older
13 ones.

14 MR. MC NEELY: Oh, the older systems. Well, they
15 don't have to be double-walled. This is not a
16 retroactive. This is only new --

17 MR. VJAS: For the new ones. And you say they
18 are already in compliance per tank?

19 MR. MC NEELY: Well, not all of them are. The
20 new ones installed in the last year or so have been in
21 compliance.

22 MR. VJAS: Okay.

23 MR. MC NEELY: The rule also, or the Federal
24 Energy Act also requires that if you upgrade your system
25 like you change the piping, then it has to be

1 double-walled.

2 MS. MARTINCIC: So old tanks can fall into it if
3 you are replacing or renovating or breaking concrete, so
4 it's not just new tanks. That's the problem is these
5 older sites are going to likely eventually fall into that.

6 MR. VYAS: And they all are subject to that?

7 MR. MC NEELY: And right now we're debating on
8 the lines. If you change your single wall line, if you
9 change just, you know, a 20-foot section, does that
10 require you to change the whole side, the whole piping or
11 not.

12 At some point, you probably should change the
13 whole piping. If it's one section, you drill through it
14 and don't probably have to do that. But that's what we're
15 trying to work the language. What percentage would you
16 want to change, double-wall through your entire piping.

17 Mr. VYAS: Most of the wells are remotely
18 located, but the distribution and supply can be very close
19 to a lot less than a thousand feet away from the potential
20 contamination source?

21 MR. MC NEELY: Right.

22 MR. VYAS: Thanks.

23 CHAIRPERSON CLEMENT: And just to clarify, the
24 water supply system does include all your transmission
25 distribution waterlines, so really pretty much a thousand

1 feet from all of the water, anybody who's got a municipal
2 system, I would think most tanks are going to be eligible
3 for these requirements.

4 MR. VYAS: That's my speculation.

5 MR. MC NEELY: And that's how we interpret it,
6 and I think that's how the Federal Government intended it.
7 I'm not sure why they actually put the language the way it
8 was, because every gas station has water. Unless you
9 don't have water, unless you have a huge truck stop and
10 it's way off somewhere with no water, so, I think it's
11 easier just to say all new systems will be double-walled.

12 CHAIRPERSON CLEMENT: This way they can put it
13 against risk and make it look reasonable.

14 MR. MC NEELY: Right.

15 MR. VYAS: Thank you.

16 CHAIRPERSON CLEMENT: Thank you very much.
17 Thanks, Phil, that's very helpful.

18 CHAIRPERSON CLEMENT: Any questions or comments,
19 additions?

20 We will move right on here. Does anybody want a
21 break now or shall we just keep rolling through? We've
22 got two more agenda items. The next two are going to be
23 pretty important ones that we have to discuss how we want
24 to manage the Policy Commission, what subcommittees we
25 want, who wants to volunteer to do extra work. And, so,

1 should we just go? Everybody feel good? We will just
2 keep going.

3 I will turn this over, as I mentioned at the
4 beginning, we have two subcommittees. The Financial
5 Subcommittee has really been the catch-all subcommittee,
6 even though it's got the name financial in front of it,
7 and Andrea Martincic has been our chairperson for a long
8 time and we're very appreciative, and I will turn it over
9 to Andrea.

10 MS. MARTINCIC: I was on the phone for last
11 month's Commission meeting, and it sounded like we wanted
12 to have a Financial Subcommittee meeting to talk about the
13 Energy Policy Act provisions and the drafting from DEQ, so
14 that was scheduled on August 30th at 10:30 here at DEQ,
15 and it was myself and Leon and Ron.

16 And so we did review the draft language, and I
17 can kind of go over what some of our initial concerns
18 were. Basically Ron had told us that they are revising
19 the language a little bit, and that most likely that will
20 be made available to the Commission once they are, you
21 know, kind of done tweaking that a little bit, and there
22 weren't any future stakeholder meetings scheduled yet as
23 of the August 30th meeting, or whatever.

24 But the first issue that we kind of -- and I
25 don't know if everybody got a copy of that draft language.

1 It kind of is like about 14 pages, I think, maybe, or nine
2 pages. Did everybody get this? No? Okay.

3 Well, I will just kind of going over it in
4 general terms, then, if half the Commission hasn't seen
5 it.

6 One of the initial kind of things we were looking
7 at had to do with the definition of what is a new
8 component, and we were concerned that the draft language
9 that was released by DEQ was rather broad and we would
10 maybe like to see that be a little bit more specific in
11 terms of what is a new component so that it's more clear
12 about which older systems are going to have to, you know,
13 come into compliance with this secondary containment
14 requirement.

15 Then I brought up that my association, that
16 initially when this all happened in 2005, we actually were
17 in favor of the secondary containment issue. We didn't
18 see that as a problem, but we actually also wanted to see
19 the agency require the financial responsibility for
20 installers and we felt that that provides owner/operators
21 with a little bit more, I guess, peace of mind knowing
22 that their installers have financial responsibility, and
23 it was my understanding that most installers have that.
24 So it's an issue of sort of addressing concerns that there
25 might be people in the marketplace that see this as an

1 opportunity to make a quick buck and maybe not be up to
2 speed on how they should really be installing the
3 equipment. But it's my understanding the agency's not
4 interested in pursuing that, so, that was something that
5 the marketers wanted to initially seek both, secondary
6 containment and financial responsibility for the
7 installers.

8 Then we talked about, it's the section that deals
9 with certification, training and recordkeeping, and we
10 talked about the fact that there are three levels and the
11 agency seemed pretty, I thought, reasonable in how they
12 were looking at setting up the operator training, because
13 that could just become such a huge administrative
14 nightmare in terms of trying to figure out how to keep a
15 segment of employees that have a high turnover rate and
16 keep all those folks up to speed on this training
17 requirement, so what the agency has looked at is creating
18 three levels, I think Level A, B and C, and so we just
19 went into, you know, need more details on that if
20 possible.

21 And then one of the big concerns has to do with
22 the delivery prohibition portion of the act, and the
23 agency had said they were actually looking at going
24 through, using an administrative order to sort of address
25 that, and that a Notice of Violation would -- we didn't

1 know if that would be the public list that they're
2 supposed to -- the agency -- well, there is guidelines the
3 EPA has put out for all of these different provisions, and
4 one of the guidelines is that the agency should have a
5 list to maintain who's out of compliance. It's supposed
6 to be readily available and up-to-date so that as a
7 jobber, you know, or supplier you know that you can go to
8 this list at all times and know whether or not a customer
9 of yours is out of compliance so that you don't get on the
10 rode with a load of fuel to go drop it, and then all of a
11 sudden realize you can't drop it when you get there and
12 then have to find an alternative place to drop the fuel.

13 So, that's a big concern, and I don't know that
14 the language in here necessarily addresses all of these
15 concerns, but it's probably something that the agency is
16 going to then want to do in rulemaking, is my thought
17 process on that.

18 And then we talked about what's the time frame in
19 getting a tank removed so that you if you are an
20 owner/operator and for whatever reason your tank was out
21 of compliance and if it's tagged and you are out of
22 business for how long, how long does it take, what's
23 reasonable to ensure that, you know, the tank's obviously
24 in compliance for environmental reasons, but also so that
25 that owner/operator isn't out of business for an excessive

1 amount of time.

2 So, that's pretty much what we discussed, and

3 that was our meeting, so, our meeting of three.

4 CHAIRPERSON CLEMENT: Well, we are in a

5 transition period, and these are -- obviously this topic

6 is one of the most critical topics for service station

7 owners. Not being able to run your operation pretty much

8 puts you out of business, so I think this is really

9 something that we need to stay on top of and take a look

10 at that legislation in detail.

11 I don't think we were all here last time and

12 everybody was clear on who was on first and who was on

13 second, so --

14 Now, let's step back. We've got that report out.

15 If you wouldn't mind, let's just step back and have a

16 really interactive discussion about how to best run our

17 subcommittees, and I will just give you background so that

18 we can start from there. I think we've been fairly

19 successful having two subcommittees, one that really

20 focuses on the technical side, because there is a certain

21 level of expertise one needs to focus on technical issues

22 in this program, and certain background, and then having

23 another subcommittee basically that dealt with financial

24 issues but also larger administrative issues that were not

25 necessarily technical in nature. Sometimes these things

1 overlap and you can't make a clean split, and we've just
2 decided as a Commission, and the two chair people have
3 decided that sometimes we have joint meetings, from a
4 chairperson's perspective having a standing subcommittee
5 or two subcommittees or ten subcommittees is really
6 advantageous because we only have these meetings once a
7 month. Everybody is very busy. It's very difficult to
8 get ahold of people and get decision-making done in a
9 timely manner, plus the formal nature of this meeting
10 doesn't lend itself to a lot of easy discussion, consensus
11 building.

12 So my recommendation as the Chair is that we
13 continue to have some form of subcommittees that, whether
14 we have current agenda items for them or not, that they
15 are in place and that as we roll through the program every
16 month we can make assignments and the work actually gets
17 done by those subcommittees, they come back to the full
18 Commission and then we make decisions based on the
19 subcommittee recommendations. So I'm just throwing that
20 out. And then I've had various --

21 Ms. Chaberski.

22 MS. CHABERSKI: I know the last time you asked us
23 to think about roles and responsibilities and names for
24 the committees. And the only suggestion -- I'm looking at
25 my notes from last month -- assuming that the Finance

1 Subcommittee for financial issues stays in place, instead
2 of maybe -- I was thinking maybe we could just change the
3 title to Evaluation Subcommittee, because it's not always
4 technical. When I think of technical, I think of
5 technical hard-core issues and, as you say, they overlap,
6 so sometimes people won't attend or pay attention because
7 it's technical and really we will be talking about maybe
8 rulemaking or something. So the first suggestion was to
9 maybe rename it to Evaluation Subcommittee.

10 And then I would say if we kept those two
11 committees, that would be appropriate, and if a larger
12 issue comes into place, we could have an ad hoc
13 subcommittee to address one big issue if something major
14 comes up, because it's peaks and valleys, and that way we
15 could kind of have that to the side and have a special ad
16 hoc committee as a subset of those two committees.

17 And then -- these are just my suggestions I'm
18 throwing out there for thought and discussion. I also
19 thought, because you asked about who could help out, and I
20 know we also have peaks and valleys, and travel and all
21 kinds of resource issues. So, I am not sure how it's run
22 in the past, and personally I would be able to help out,
23 but maybe if we had an agreement or an understanding that
24 somebody could, you know, pair up, so either team up and
25 have a backup, and then maybe quarterly or every six

1 months switch chairs around so that somebody, you know,
2 doesn't have to -- not that we don't want to all help, but
3 maybe that will help the moving parts and our own issues
4 in order to still keep things rolling along. So, those
5 were my thoughts for the future.

6 CHAIRPERSON CLEMENT: Thank you very much.

7 MR. BUNCH: I think the suggestion for having
8 maybe two individuals sort of share responsibility for
9 these subchair positions is a good one because all of us
10 probably have things that we did outside of participating
11 with this group, and the smaller groups, and sometimes we
12 have time and there are other times we just don't based
13 upon our core responsibilities. So, I think we might
14 attract more participants or more volunteers if it was
15 more of a shared responsibility, personally.

16 CHAIRPERSON CLEMENT: I like that suggestion
17 also. And just to throw one more, eventually I'm hoping
18 to not be the chairperson any longer, and there is quite a
19 bit of work to do when you are in the chair, so also keep
20 that in back of your minds. But it's probably a little
21 premature to the new group that have only been here a
22 month or so, but in the future I definitely will be
23 willing to retire from this role.

24 MS. MARTINCIC: I think also the subcommittees
25 now -- isn't it like starting in September, I think

1 Cynthia had told me that we are required to keep official
2 minutes, and whatnot, of subcommittee meetings. I don't
3 know that we've necessarily been doing that in the past.
4 I don't know if that's a responsibility of the chair, the
5 subcommittee chairs or co-chairs or the agency can just
6 have a tape recording in that room and that suffices, and
7 just save the tapes, or does all of that stuff have to be
8 transcribed and distributed. I don't know what the
9 requirements are, but that's something else to keep in
10 mind that would definitely had to the time commitment a
11 little bit, I think.

12 CHAIRPERSON CLEMENT: What we've done in the
13 past, just so you know, sometimes formal recommendations
14 came out in writing, sometimes formal meeting minutes.
15 The last Technical Subcommittee meeting we did formal
16 minutes, but not always. And so, this is a new
17 requirement, statutory requirement for subcommittees that
18 we will have to meet.

19 Would a tape suffice for that purpose, Ms.
20 Huddleston?

21 MS. HUDDLESTON: I'd have to check, but in
22 general as long as it's available to the public, but I
23 haven't read the language in a while, so I have to look at
24 it.

25 MR. VYAS: Madam Chairman, just to shed a little

1 light on it in terms of the requirement, because this is a
2 new imposition, but any sub group of any official body
3 appointed and/or elected is subject to this requirement,
4 but because of the practicality, a tape recording that is
5 made available to public and public knows that they can
6 come and listen to it, meets the verbatim or substitution
7 of a Court Reporting kind of requirement.

8 You must have an agenda. You must publish the
9 agenda 24 hours in advance so people have access to it,
10 including provision for the handicapped individuals if
11 they call you in advance. And the second part is the
12 minutes don't have to be verbatim, but essential key issue
13 of the discussion must be in a summarized format that is
14 published in a timely manner so that people who are
15 interested in subcommittee discussions have a document.
16 It can be just a one-page, two-page, but essentially where
17 the meeting took place, what were the purposes of the
18 meeting, what was the agenda, the public notice, was that
19 in compliance, who was present, who was absent, and the
20 agenda items, who made the motion, if there are any
21 motions, and if there was discussion, simply the key
22 points of the discussion, and that meets all the legal
23 requirements for the new statute as I understand it.

24 CHAIRPERSON CLEMENT: Thank you. So we have two,
25 then, we will have to do, it sounds like a written

1 summary.

2 MS. HUDDLESTON: We've always done the agenda

3 that way.

4 CHAIRPERSON CLEMENT: We've always done it that

5 way.

6 MR. VYAS: THE step two of summarizing the

7 minutes, and if you use a tape recorder and make it

8 available, just identify it, for example, Cynthia, if

9 she's available, to have the tapes so people know if you

10 have a question, you are welcome to coordinate with her

11 and she will make arrangements for you to listen to the

12 tape, and that meets the requirements as I understands it.

13 CHAIRPERSON CLEMENT: Thank you. So that is a

14 new piece of work that we'd have to do for each

15 subcommittee meeting, which is the meeting summary. And I

16 know I did the one for the Technical Subcommittee. It

17 actually took me about two to three hours. It takes time,

18 so, just to put the facts on the table for everybody.

19 Does anybody have a sense of two subcommittees,

20 three subcommittees, what their roles should be? I know

21 Cathy had some very good ideas. Other ideas?

22 Mr. O'Hara, you've been around a long time. What

23 do you think has work effectively? You've been here the

24 longest.

25 MR. O'HARA: I think the entire Commission is

1 really evolved quite a bit since its inception in the late
2 '90s, and I think that the reasons that was put into place
3 aren't the same, aren't really pressing and the same
4 reasons we have today. These meetings used to be very,
5 very large and sometimes auditoriums with 20, 30, 40
6 people out there that was a lot of issues over money. I
7 mean, things attributed to Phil and his group. I mean,
8 the program's evolved, the management has evolved and the
9 need for this Commission is not the need it was ten years
10 ago.

11 We have a lot of -- State Assurance Fund was a
12 big, big lightning rod, people fighting over it, there
13 are backlogs we don't have today. The committees were
14 created because -- subcommittees were created, like you
15 said, we just couldn't -- they were really involved, and
16 we had to go into stakeholder groups and really ferret out
17 all the issues and bring forth recommendations to the main
18 committee. And I just don't that those are as prevalent
19 as they were back then, so I don't think the work loads
20 are going to require as much of your time. There is very
21 few financial issues anymore. They're still there, but
22 not really big ones, so it's going to be less work load.
23 I think two is fine. Ad hoc, if there is an issue that
24 comes up.

25 MR. MC NEELY: In terms of the future, what I see

1 is the Energy Act, we need a committee to look at that and
2 that could be part of the Financial Subcommittee.

3 I think the MNA rule, we're about to happen, and
4 a way to implement that. There will probably be so
5 questions, I could see the technical group wanting to see
6 how it's happening, how's it going.

7 And then done the road, I could see all the sites
8 that are not SAF eligible, how is that going, how's the FR
9 going. We put a big recommendation to the legislature in
10 2009, so I think that could be another committee saying is
11 it really working, is there a recommendation we need to
12 make. Those are really the only three major issues I see
13 left in this program.

14 CHAIRPERSON CLEMENT: Not unless something comes
15 up in terms of risk that we're missing from a national
16 sense, you know. I don't see much else, either. And I
17 think it is a compliment to the agency, and we've done
18 some good work here, too, but I think it is a real
19 complement. It is a mature program now. We've got mature
20 people in place in terms of management, and the systems
21 are in place. So good job.

22 MR. MC NEELY: Thank you.

23 CHAIRPERSON CLEMENT: So, I guess to sell that
24 more is if you decide to become involved with a
25 subcommittee, your work load will be much lighter than it

1 would have historically.

2 MR. BUNCH: A question regarding what was the
3 third potential topic for a subcommittee action, could you
4 elaborate?

5 MR. MC NEELY: All the SAF noneligible sites, the
6 ones being reported now, and how are they coming along, is
7 FR working, are the insurance companies paying, because we
8 have to make a recommendation to the legislature in
9 September 2009 on the status of the sunset, and I think
10 that would be probably be an evaluation we would want to
11 make starting next year, how's it working.

12 CHAIRPERSON CLEMENT: Are mom and pops able to
13 get insurance, is it affordable, is it meeting their
14 needs.

15 MR. BUNCH: So that was built in to 1306 that you
16 were to provide the sub date.

17 MR. MC NEELY: Right. I get one last opportunity
18 for the community to say hey, it's not working, these
19 people are being left behind, something like that.

20 MS. MARTINCIC: There was a concern that some of
21 the smaller owner/operators would not be able to get
22 financial responsibility, you know, the appropriate
23 insurance that they need. But so far, I mean, I haven't
24 gotten any personal problems from my members, but, you
25 know, I don't represent everybody so.

1 CHAIRPERSON CLEMENT: We have not got a lot of
2 word, I should say, Ms. Martincic did a lot of outreach
3 and a lot of research last year, and we have not found a
4 lot of problems to date with insurance acquisition.

5 MS. MARTINCIC: It's been three years. The
6 Governor signed it 2004, so it's been a good three years
7 since all that was hot and heavy.

8 CHAIRPERSON CLEMENT: We certainly have our ears
9 open but --

10 MS. MARTINCIC: I like the idea of renaming it.
11 I don't feel like I deal with financial. It's more of a
12 policy, or like you said, evaluation subcommittee that
13 looks at potential draft legislation.

14 CHAIRPERSON CLEMENT: See, you know, I mean, I
15 think I'm saying something opposite of what Ms. Chaberski
16 said, but I like having a stand-alone technical, and then
17 everything else lumped together, because technical minds
18 don't necessarily work towards writing legislation and
19 administrative things, and administrative minds don't
20 necessarily have the expertise to get into the
21 nitty-gritty of the technical details to get to a
22 resolution that they can then represent to the full
23 Commission.

24 MS. CHABERSKI: I think I was saying the same
25 thing you are, only the opposite way. If it's technical,

1 people may not pay attention if you are rule writing, so I
2 think we're on the same page.

3 CHAIRPERSON CLEMENT: You are saying it
4 different.

5 MS. CHABERSKI: I'm saying it in a reverse way.
6 And my assumption was that financial would say Financial
7 Committee and then we'd have an Evaluation Committee, but,
8 it doesn't matter. As long as it's clear, I guess I'm
9 saying that people understand. You could title something
10 Evaluation Committee, then say this is a technical issue,
11 then spell it out, however it's clear to the folks what
12 we're dealing with, that's all.

13 MS. MARTINCIC: Historically I think that the
14 Technical Subcommittee meetings have always been more
15 well-attended and long meetings and --

16 CHAIRPERSON CLEMENT: Very geeky.

17 MS. MARTINCIC: I'm not wedded to this Financial
18 Subcommittee in any way. I mean, I going to be working on
19 these issues whether or not that subcommittee exists or
20 not, but, I mean, I usually get Leon there, and maybe like
21 two or three -- during the SAF rule, we had maybe like
22 four people at the meetings sometimes. Right?

23 MS. CHABERSKI: So, are you suggesting to put the
24 financial under something more broad based?

25 MS. MARTINCIC: Yeah, yeah, because I just think

1 that -- I mean, it's either that people just don't -- I
2 don't know. They just don't care about the legislative
3 side of it, or what, but it just doesn't seem that those
4 meetings have been as well attended.

5 MS. CHABERSKI: Now, you are saying Technical
6 Committee and Evaluation Committee could be broad-based?

7 CHAIRPERSON CLEMENT: I think that's what I would
8 think would meet our needs the best. What we found
9 happening in the Technical Subcommittee, you get the
10 geeks. And I go to those. I am in that category, and
11 those are the ones I attend, and those people don't -- and
12 those people don't have the same, including myself,
13 necessarily, the same kind of over big picture.

14 MS. CHABERSKI: No. I agree. Now, if the
15 financial is going away, I think it would be a broad-based
16 evaluation, and then technical, that would split it up, so
17 we have the same goals. We're just shoveling around the
18 pieces.

19 CHAIRPERSON CLEMENT: Anybody? Somebody want to
20 summarize that?

21 We will have an evaluation committee,
22 subcommittee. Is that what we're going to call it? Which
23 will include the bigger, broader policy, legislative,
24 financial issues. And then we will have a technical
25 subcommittee which will be the geeks, like myself, and

1 others who enjoy the nitty-gritty detail of ironing out

2 what is the issue and how we are going to resolve it.

3 And then do you want to form an ad hoc committee,

4 or do you want to form the ad hoc committee ad hoc?

5 MS. CHABERSKI: I suggest we say ad hoc when the

6 need occurs if it occurs, because it may not happen.

7 CHAIRPERSON CLEMENT: Okay. Do we have a

8 consensus that we will have into the future -- I don't

9 think we need to vote on this, do we?

10 MS. MARTINCIC: Just renaming.

11 CHAIRPERSON CLEMENT: We're just renaming the

12 same thing we already have pretty much. If we do, I want

13 to meet everything by the letter of the law. I don't want

14 to do anything that would be inappropriate.

15 So we will have an Evaluation Subcommittee.

16 We'll have a Technical Subcommittee. Okay. The easier

17 one to address right now is Technical Subcommittee. We do

18 not have anyone in the Technical Subcommittee chair

19 co-chair role. So, those of us who have technical

20 expertise that sit on the committee or commission that

21 would like to become more involved and directly appointed

22 by the Governor, who might want to volunteer for that

23 role, is there anyone here today that would like to help

24 on the Technical Subcommittee?

25 MS. KALAGHAN: I volunteer.

1 (Applause).

2 MS. CHABERSKI: Does anybody have feedback on the
3 backup? Are we going to do the tag team.

4 CHAIRPERSON CLEMENT: I think the backup is an
5 excellent idea.

6 Is there a second person who is willing to
7 volunteer for the Technical Subcommittee?

8 MS. CHABERSKI: I will be the backup.

9 CHAIRPERSON CLEMENT: Oh, very good. That's
10 going to be an excellent committee. Thank you very much.

11 And you two know each other now, and that will be
12 excellent.

13 MS. CHABERSKI: I have a question on procedural
14 or legal. Can we talk to each other on a regular basis
15 and discuss things without going through sending e-mails
16 to you, or is that a violation? Can you tell us what our
17 boundaries are as a tag team?

18 MS. HUDDLESTON: You can discuss what you want to
19 have, you can't make a decision.

20 MS. CHABERSKI: Okay. At the last presentation,
21 it was --

22 MS HUDDLESTON: You can't go around lobbying
23 everybody else to make the decision go your way. You can
24 certainly discuss how to organize the committee and set up
25 the agenda, where you want to meet and when.

1 MS. CHABERSKI: And stakeholders have agenda
2 items for subcommittees. Does the process, it goes
3 through the chairperson?

4 CHAIRPERSON CLEMENT: It hasn't in the past.
5 What has happened in the past, the Technical Subcommittee
6 has gone to the Technical Subcommittee chair, and that was
7 Hal Gill, and he had this huge distribution, so I will
8 make sure you get his distribution list. So, you know, he
9 ran that subcommittee, and we would assign him -- he would
10 come to the full Policy Commission and say, I've got these
11 five issues that have been raised by the regulated
12 community. I recommend we address these three, these two
13 are not ripe.

14 Then we would vote on that and assign that to the
15 Technical Subcommittee, so, it's an interactive process.
16 You've got to be able to do business. I even felt awkward
17 poling people about this meeting for getting people
18 interested about the subcommittees and the chair roles,
19 because I wasn't trying to necessarily influence anyone in
20 terms of how we organized but that we actually became
21 involved, you know, so difficult marketing, a little bit
22 more than I normally would have programs.

23 So that's the difference, you can't really lobby
24 to get your viewpoint past, but you certainly can have
25 enough discussion that you can frame the issue and inform

1 people enough that you can have an intelligent
2 conversation.

3 MS. CHABERSKI: I'm going to ask the question,
4 but I volunteered before I should have asked the question.

5 Could we come to some semblance of time frame so
6 that we can switch seats, you know, like after four months
7 or six months?

8 CHAIRPERSON CLEMENT: I'd say six, because I
9 don't think you guys are going to have much meeting in the
10 next six months, so that would be my suggestion.

11 MS. CHABERSKI: All the other volunteers can
12 figure out when they want to step in.

13 CHAIRPERSON CLEMENT: Is that okay with
14 everybody, six months? Just because I don't think you are
15 going to have a lot.

16 MS. CHABERSKI: Okay. And there are monthly
17 meetings also or is it whenever you need?

18 CHAIRPERSON CLEMENT: They have been regularly
19 scheduled monthly meetings, however, we haven't had a need
20 for any, sometimes probably been three months since we've
21 had a Technical Subcommittee meeting.

22 MS. CHABERSKI: I know we all have work
23 schedules. I'm sorry, I am brand-new, but who sets the
24 dates for that is there a set date already like our
25 regular Policy Commission meeting?

1 CHAIRPERSON CLEMENT: What is the set date?

2 MS. MILLER: We set the dates at the beginning
3 year, usually about December. We will have the dates out
4 for the upcoming year, and I think this year it was
5 decided that the Financial Subcommittee would have theirs
6 like the first Thursday of the month, and the Technical
7 would have theirs the second Wednesday.

8 MS. CHABERSKI: It's the second Wednesday of
9 every month. Is this on the web?

10 MS. MILLER: It's on the web for this year.

11 CHAIRPERSON CLEMENT: And we can change that.
12 And many of these subcommittee meetings have been changed,
13 depending on the schedule and the timing that we had to
14 get something accomplished. But it's nice. I strongly
15 recommend that we have all of our meeting dates set up at
16 the end of the year, at least tentatively, because then we
17 can plan our schedules.

18 MR. MC NEELY: And the reason we set them up a
19 year in advance is we have to reserve the room, too. So,
20 if you want to have a meeting next week, they may not have
21 any rooms available, so usually we set it up. If we don't
22 need it, we cancel it, but we have a room available.
23 That's why they're set up.

24 CHAIRPERSON CLEMENT: For example, though, if the
25 second Wednesday of every month is not a good date for

1 either of you, you could make it, you know, the third
2 Wednesday or the second Tuesday. You know what I mean?
3 You have that flexibility. So think about that into the
4 future, too, perhaps.

5 MS. CHABERSKI: And if the chair can't make it,
6 and I have to sit in for whatever reason, is it okay that
7 we do that since we set it up that way?

8 CHAIRPERSON CLEMENT: Sure. Basically -- should
9 we term it co-chairs with one on first and one on second
10 for six months, and then that chair trades off? I think
11 that's really a nice solution to the work load. Thank
12 you.

13 Anything else on the Technical Subcommittee?

14 Okay. Then we will go to the Evaluation
15 Subcommittee. I know Ms. Martincic has done a remarkable
16 job for several years now in the Financial Subcommittee.
17 I don't know whom else would like to volunteer for the
18 Evaluation Subcommittee at this juncture. Is anybody --

19 MR. BUNCH: I will volunteer, unless you want it
20 as well.

21 MR. VYAS: Go ahead. I'm so remote.

22 MS. MARTINCIC: If you both want to do it.

23 MS. CHABERSKI: Do you have to physically be
24 present or can you be on the phone for the subcommittee?

25 CHAIRPERSON CLEMENT: Phone participation is

1 actually being present. You can vote and all of that.

2 MS. CHABERSKI: Okay.

3 CHAIRPERSON CLEMENT: So we've got Mr. Bunch.

4 Did we have a second volunteer or a third?

5 MS. MARTINCIC: I mean, if you'd like to do it,

6 I've been doing this forever, I will still be at the

7 meetings, obviously, and participate, but I don't --

8 MR. VYAS: No, I will not volunteer.

9 CHAIRPERSON CLEMENT: So, people are so excited

10 to be on these subcommittees that we have more than

11 enough.

12 MS. MARTINCIC: I make a motion that Bill chairs

13 it and I co-chair for the six-month period.

14 CHAIRPERSON CLEMENT: Perhaps you could work that

15 out between yourselves.

16 MR. BUNCH: We will figure it out.

17 CHAIRPERSON CLEMENT: So, what we have now are

18 two subcommittees. One is the Technical. We have two

19 new, and I will definitely come to the first or several

20 first of those so that, you know, you guys get some

21 continuity there. We have two new co-chairs of the

22 Technical Subcommittee. We have an Evaluation

23 Subcommittee, and we have -- I won't say old chair, a new

24 co-chair for that committee. So excellent.

25 As far as future schedules, I don't see anything

1 on the Technical Subcommittee's horizon unless you get
2 some feedback from other people and let us know. Does
3 anybody have any technical issues on the Commission today
4 that we'd want to assign.

5 The Evaluation Subcommittee, what would be your
6 recommendations, Mr. Bunch and Ms. Martincic?

7 MS. MARTINCIC: I'd like to know if the
8 Commission Members want to further look at this Energy
9 Act. It's a big issue.

10 MR. BUNCH: Yes.

11 MS. MARTINCIC: No one seemed to be at the last
12 meeting, so I don't know if it's just an issue of folks
13 not getting the draft language in time or what. But, I
14 mean --

15 MR. BUNCH: I think it's more of the latter. I
16 think we should address that again, because I don't know
17 if there is a philosophy about much who you want to
18 memorialize in your legislative language versus workout in
19 rulemaking. It sounds like there is a lot of meant in the
20 legislative language that's been proposed. I would like
21 to take a look at that again.

22 MS. CHABERSKI: I have a question for Phil. At
23 the last public workshop, are going to take comments and
24 then make changes before -- so when you got approval to go
25 ahead, and then was the full Commission going to look at

1 it once you finalize what DEQ thought was the language.

2 Is that correct.

3 MR. MC NEELY: That was my plan. I wanted to
4 actually to get the comments, revise the language, go back
5 out to our stakeholder group, not inside the committee,
6 stakeholder group, and get one more set of comments.

7 MS. CHABERSKI: Then give it to the Commission.

8 MR. MC NEELY: Once we have approval from the
9 Governor's Office to pursue this, because we do not have
10 authorization to pursue it. Once we have that and we are
11 going to pursue, then at that point I'll come to the
12 Policy Commission and say, hey, this is okay to go.

13 But that's where I'd like to go, because I think
14 the reason a lot of people didn't show up at the last
15 meeting was that was a week or so after we had our public
16 meeting. We didn't have much of a turnout. We only had
17 six or seven people show up. But still they had the
18 language at the public meeting and Financial Subcommittee
19 had one a week after or so.

20 MS. MARTINCIC: When are you planning, then, on
21 releasing the changes and having the next round of public
22 meetings, because I think it's probably not really going
23 to be very meaningful for us to have another Evaluation
24 Subcommittee meeting until that occurs.

25 MR. MC NEELY: We don't know how much interest

1 there really was for this. First, we just received some
2 new comments just a couple of days ago, and they are three
3 pages long, the Western States Petroleum. Once we get
4 that done, we will e-mail out to everybody again and see
5 what the interest is to having another public meeting.

6 The first meeting we had a very good turnout, 25,
7 30 people. The second meeting we had six. I don't know
8 if this meeting, if it's the curve, we might have two. I
9 don't know. But if there an interest, then we will have
10 another meeting. That should be our last public one, I
11 think, and then we could turn it over to the Policy
12 Commission to evaluate it officially.

13 CHAIRPERSON CLEMENT: I'm going to look to you
14 two that are going to be a lot closer to this than
15 certainly I am about when you think we should become
16 involved and how critical certain issues are and where the
17 agency may need some additional encouragement.

18 MR. BUNCH: My thought would be along Andrea's,
19 we'd like to see what changes are incorporated in this
20 round of draft language, but I would also like to see a
21 copy of WSPA's comments and maybe any of the other
22 comments you received, if that's available for public
23 review, because that way we will be able to see if maybe
24 concerns that we the panel have or collectively have or
25 address through public comment already.

1 MR. MC NEELY: Western States Petroleum.

2 MS. MARTINCIC: It's not WSPA.

3 MR. BUNCH: Oh, it's not WSPA.

4 MR. MC NEELY: Was there a third one, Ron?

5 MR. KERN: Yes. Ron Kern, DEQ. And I believe we
6 had some from Arco, too, as I recall, at least one of the
7 companies.

8 MR. MC NEELY: We had three. We can make those
9 available, but I just don't want a duplicate efforts. We
10 are going to have our public process, and Bill Bunch is
11 very -- he was there. Andrea, you with were there the
12 first time. The second time you didn't show up.

13 MS. MARTINCIC: I had my conflicts.

14 MR. MC NEELY: You were on the phone. It's not
15 like everyone's not involved.

16 MS. MARTINCIC: Do you plan on having that out in
17 October, or -- because I guess we need to figure out, Bill
18 and I, when we would schedule a meeting, so, you know, and
19 it's usually -- it's supposed to be the first week, so
20 obviously next week it's not going to be available, so is
21 it going to happen in October so that we might want to
22 schedule a November 4th meeting?

23 MR. MC NEELY: I would go with that. I'm on
24 vacation until October 13th. When I get back, I think
25 that would be the time to send the language out, probably

1 try to have another meeting sometime in late October. And
2 then that will give you guys available like early
3 November, probably, start looking at it. By then we may
4 have approval to pursue. We may not have a approval to
5 pursue it by then. We may know a little more.

6 CHAIRPERSON CLEMENT: Does that place you in an
7 awkward position not having approval to pursue it if we
8 look at it formally?

9 MR. MC NEELY: Yes, because we are not -- at that
10 point we're not proposing anything, so you are looking at
11 things to make recommendations to DEQ, and we're not
12 proposing, so that's my issue with having the Policy
13 Commission look at stuff when I don't have authority to
14 pursue it.

15 CHAIRPERSON CLEMENT: I was reading between the
16 lines there.

17 We can look at things and not necessarily take
18 formal action until you have formal approval to pursue
19 legislation. Perhaps that would be a way to sort of
20 manage that moving target.

21 MR. MC NEELY: Right.

22 CHAIRPERSON CLEMENT: But we will look to you two
23 to decide and to announce when we should be paying more
24 attention to this, and certainly not until we get the next
25 round of language on the way.

1 MR. BUNCH: But if you are going to be putting
2 out some draft language in October, there is no reason we
3 can't schedule a November meeting to discuss this.

4 CHAIRPERSON CLEMENT: Sounds like a good plan.
5 Any other sub committee issues, ideas?

6 MS. CHABERSKI: Basic question: The
7 subcommittee, the other members don't attend the
8 subcommittees, but they can give input. How does that
9 work?

10 MS. MARTINCIC: They can attend. Anybody can
11 attend.

12 MS. CHABERSKI: Okay. I mean, it's an open
13 meeting, but it's not like an expectation, and then
14 sometimes the subcommittee, the process will come to the
15 full Commission for --

16 CHAIRPERSON CLEMENT: It always go back to the
17 full Commission. We have to -- if it's something that is
18 a decision, we have to formally vote on it as a full
19 Commission. But you work up the ideas, you work up the
20 recommendation and the explanations, so that -- you know,
21 a lot of people on this Commission are not technically
22 competent, you know, not competent -- that is a really bad
23 word.

24 MR. MC NEELY: Who are you looking at?

25 CHAIRPERSON CLEMENT: Technically, you know,

1 experienced, and so you have to bring it to people in a
2 manner which they can understand it and then, you know,
3 have a rational vote, so it's a different process.

4 MS. CHABERSKI: So, you can act as a
5 noncommission member or a commission member in these
6 subcommittees?

7 CHAIRPERSON CLEMENT: Yes. And, you know, they
8 are conducted in a much less formal manner. It's a
9 dialog, and we take -- so we will have to take minutes
10 meeting minutes.

11 MR. MC NEELY: I have a comment. Should we
12 advertise that we have two new co-chairs send it out to
13 our e-mail list with their phone numbers? If you have
14 technical issues, you should contact, if you have
15 nontechnical, contact? Should we do that?

16 CHAIRPERSON CLEMENT: Absolutely, absolutely,
17 absolutely.

18 And even the new volunteers.

19 Anything else, Mr. Bunch.

20 MR. BUNCH: I would like to kind of address your
21 agenda item 6-C, and then having heard that DEQ is going
22 to owe the legislature a September 2009 recommendation or
23 update, you know, I would like to kind of combine C along
24 with the Evaluation Subcommittee, kind of taking a peak at
25 the same issue and maybe help DEQ with their update to the

1 State Legislature, at least opine on our view of the world
2 through that work, which jumps out at me as 40 releases
3 reported after the sunset of the Fund, how does that
4 compare to pre-Fund submittals, and when we look at it,
5 evaluating the success of the program. In my mind it's
6 not just for operators able to get FR, but how successful
7 they've been in recuperating costs, what issues have come
8 out of transitioning from the State Assurance Fund to
9 financial responsibility through insurance or other
10 method, you know, mechanisms. And to me, the success is a
11 lot more broad than, geez, were you able to get an
12 insurance policy. And, do we have a suppression of LUST
13 reporting. Have other states seen issues around this
14 transition, and look at it more, you know, holistically
15 than perhaps we have to date.

16 So that would be my recommendation, and since
17 we've got not a lot of time, and maybe a lot of research
18 to do, I'd like to start that process sooner rather than
19 later, if you do that through that Evaluation
20 Subcommittee.

21 CHAIRPERSON CLEMENT: I think that's an excellent
22 idea, personally.

23 Any other comments? I don't want to get in the
24 way of what DEQ has to do, but I also want to make sure
25 that if the Evaluation Subcommittee can support your

1 efforts, and perhaps expand it in a way that will be very
2 helpful to the regulated community, not just the agency,
3 because the agency is going to be worried about money
4 moving, and the regulated community is going to be worried
5 about the overbroad approach.

6 Ms. Martincic, do you have any comment on that?

7 MS. MARTINCIC: I think the legislation action
8 also requires them to look at other aspects, just not
9 whether or not the Fund is solvent in terms of paying out.
10 And when all this came about before 2004, I mean, I did
11 extensive research on all the states across the country
12 and looked at phasing out the fund, and how it impacted
13 owner/operators, I did a huge survey with my
14 owner/operators to get information.

15 And so, I mean, I don't know that -- I mean, I
16 think that's great, Bill, so you could head that up. I'm
17 not sure I'm ready to go back and do a whole other
18 dissertation like that on UST solvency issues. But, no,
19 it's absolutely a good point, and if I remember right,
20 even the legislation had some really specific things that
21 DEQ needed to report on, and it wasn't just, you know, is
22 there money available to pay out. There were some
23 business-type concerns and issues there. So, wasn't
24 there? I mean, there were specific things.

25 MR. MC NEELY: I don't remember having a list of

1 them, but we have been looking at the FR issues. We've
2 been looking at the issues before and after. We evaluate
3 that all the time. That's what we do.

4 So -- but, you know, in other states, we are
5 always in contact with EPA and other state agencies, so we
6 know what's going on. I think Senate Bill 1306 sort of
7 took all of that consideration when they came out with the
8 MNA account and this report, so I think it's part of the
9 legislation.

10 CHAIRPERSON CLEMENT: So, I think it would be a
11 very useful exercise. Is there any dissension in terms of
12 the Evaluation Subcommittee with Mr. Bunch in charge will
13 monitor and advise us on this issue as we move forward?

14 MR. MC NEELY: I have one concern.

15 CHAIRPERSON CLEMENT: Okay.

16 MR. MC NEELY: You know, Andrea doesn't want to
17 jump in and redo all that. The DEQ, we are very busy with
18 a lot of initiatives, and I don't really have staff to do
19 research projects. We are looking at the stuff, but I'm
20 not going to create new stuff that we're not looking at
21 unless it's really critical to our 2009 report.

22 CHAIRPERSON CLEMENT: Perhaps what we can do is
23 maybe framework what kind of information Mr. Bunch would
24 need from the agency versus other mechanisms acquiring
25 data and resources, because I think that's a fair

1 statement. You know, we're going to have to make these
2 two things mesh, and it seems a little more to me right
3 now.

4 MS. MARTINCIC: There is a lot on the web,
5 obviously, and there is the association of all the various
6 state -- SWALA, yeah, they do like end-of-the-year status
7 type of work, which is good for kind of getting data or
8 statistics on things. And they usually have contact
9 information if you want to call and follow up with
10 individual states that have similar, like they have
11 similar experiences to Arizona.

12 MR. BUNCH: I was not anticipating there would be
13 a huge draw of ADEQ resources. As a matter of fact, some
14 of the research that was done for the committee can
15 actually assist DEQ in providing there update. Perhaps
16 without rolling up the sleeves and get into it, it's hard
17 to know.

18 CHAIRPERSON CLEMENT: Any more other comments or
19 concerns, any other ideas? So we basically have no
20 agendas for the Technical Subcommittee. One specific
21 agenda is Energy Policy Act. And one more agenda item, a
22 working with DEQ on basically coming up with some
23 measurable evaluation of SAF phase-out insurance and how
24 it's affecting the state in comparison to other states,
25 and we are going to look to you, Mr. Bunch to frame that a

1 little bit more tight.

2 Okay. Good, let's jump. We have now general
3 call to the public there. Are there any public comments
4 today? Mr. Vannais?

5 MR. VANNAIS: Good afternoon. Leon Vannais.
6 I've got just a few short comments, one regarding
7 Technical Subcommittee's or subcommittees in general.
8 It's my understanding that the members of the committees
9 the UST Policy Commission is made up of individuals
10 supposed to be representative of the people that are
11 regulated by the UST program, and that those individuals
12 can be approached by the people that they represent to
13 bring important issues before the Policy Commission,
14 before technical subcommittees, or whatever subcommittees
15 they deem appropriate for that particular issue.

16 I personally have recently brought up an issue
17 that was addressed by Madam Chairperson earlier in this
18 discussion today regarding system run time and power
19 outages. I appreciate your attempt to crystallize the
20 issue and elicit a response from Mr. McNeely on this, but
21 I'm afraid that the whole issue has not been vented within
22 this forum and request that the UST Technical Subcommittee
23 be allowed to discuss this and vent this issue a little
24 further. There are repercussions beyond the exchange that
25 I happened to observe today that I am not sure I have

1 expressed to anyone besides my representative on the
2 Policy Commission. And I think it's an appropriate avenue
3 for this to go before the Technical Subcommittee for
4 discussion.

5 Now, if during those discussions in the Technical
6 Subcommittee, I'm sure the chairperson of that
7 subcommittee decides that it is not an issue that should
8 be brought before the committee, that is certainly an
9 option. But I don't think we should try to narrow the
10 opportunity of the public or the regulated community has
11 to provide input as to what to put before this committee
12 or not. I think you are probably losing a valuable
13 resource, and the entire community that's being
14 represented here today.

15 So, to that end, I would request -- and I am not
16 certain of this. Historically, my understanding of the
17 chairs and subcommittee could at their discretion add
18 agenda items to their specific subcommittee meeting, did
19 not necessarily need to be assigned by the Policy
20 Commission. And I've heard suggestion today that if there
21 is no Technical Subcommittee agenda meeting items, then
22 that decision is being made as of right now, and I don't
23 think the suggestion is that the chairperson or that
24 anyone in this room or the Policy Commission Members could
25 make a recommendation to that chairperson to put something

1 on the agenda items for next month. I don't think that's
2 the intend to narrow these kinds of discussions.
3 So I would encourage, Madam Chairperson, to
4 elaborate on the method on which issues are put on
5 subcommittees or when those subcommittee issues can be
6 brought up at subsequent meetings so that the community
7 that's involved outside of the immediate Policy Commission
8 knows who to approach, how to lobby to get issues before
9 them and reach some kind of resolution on that. And thank
10 you for your time.

11 CHAIRPERSON CLEMENT: Any other public comments?

12 As you know, we have, because it's an open
13 meeting, we have a call to the public. Unless it's a
14 specific agenda item, we really can't respond, and we have
15 to place it on another public meeting.

16 I think this issue really is one of the topics we
17 discussed today. And, if it wasn't clear, I don't think
18 it's a problem to expand on that a little bit, at least
19 historically how we have managed the subcommittee
20 meetings, that the full Commission was consulted about the
21 agenda items that will be taken up by the two
22 subcommittees, and we've not -- I don't remember whether
23 we've ever had to vote on that. We may.

24 MS. HUDDLESTON: I think we have voted on it.

25 CHAIRPERSON CLEMENT: Yeah, I think we have voted

1 on it in the past when it seemed to be a bit dicey. But
2 when there is a general consensus and there is no
3 discussion and adversity, we've never voted on it then,
4 but if we need to vote on it today, we maybe should, but
5 that's why I'm looking to you. I don't know.

6 MS. HUDDLESTON: Well, I am a little
7 uncomfortable with you using the word "consensus" because
8 the way the Commission acts is through a vote.

9 CHAIRPERSON CLEMENT: Okay.

10 MS. HUDDLESTON: It may be a consensus, and that
11 arguably is in itself a vote, but it really, I think it is
12 more clear if you have a regular motion and a second and a
13 vote, because that's the way the Commission is to act.

14 CHAIRPERSON CLEMENT: Then do you recommend that
15 we for today's purposes have a motion on the appointments
16 to the subcommittees and also the change to the
17 subcommittees?

18 MS. HUDDLESTON: That would make it clearer.

19 CHAIRPERSON CLEMENT: Let's go ahead and do that,
20 then, and I appreciate your input on this, because I am
21 trying to move this along quickly and not belabor it, but
22 that would be good.

23 We have never, I don't believe in the past, this
24 Technical Subcommittee or the Financial Subcommittee just
25 added agenda items on that weren't discussed by the Policy

1 Commission in some format in a formal meeting. It's
2 really the Commission that has the authority, which vests
3 itself to the subcommittee.

4 So, as far as the public getting agenda items,
5 the public can contact any committee member, Commission
6 Member and talk to them. What has happened in the past,
7 if it was a financial issue, often Ms. Martincic would
8 receive it. If it was a Technical Subcommittee issue, Mr.
9 Gill was in that role as chair and he would receive that,
10 and he would have dialogue with the consulting community
11 and make sure he raised those issues that were of concern
12 to the consulting community to the Policy Commission for
13 assignment. And that's how we've done it in the past.

14 And if it didn't need an assignment to further
15 flesh out the issue, it just came up as an agenda item
16 under the subcommittee, because some of these issues we
17 don't need to talk about for an hour. We pretty much know
18 what's going on. So that's what we've done in the past.

19 I don't think I would recommend that we change
20 that in any way. So, okay. Yes, Mr. Vyas.

21 MR. VYAS: Madam Chairman, just as a suggestion
22 to follow up on the observation shared, you may want to
23 emphasize that while the Commission maintains its focus
24 and seeks help from the two subcommittees for their
25 expertise and recommendation, and at the same time being a

1 public body, both the agencies, DEQ itself, have done an
2 excellent job in receiving public input and both the
3 subcommittee structures welcome any and all items that are
4 worthy of at least consideration, rely upon their
5 respective expertise to judge whether it is worthy of
6 further consideration or discussion.

7 But now knowing the names, you and everybody
8 else, if you have a suggestion, I suggest to you to
9 enlighten them, at least share your suggestion with them,
10 let them judge the relative merits of that particular
11 issue or concern with respect to the framework they are
12 dealing with and the priorities within that framework, and
13 respond back to you, whether it's something that's going
14 to be taken up as a discussion at the subcommittee level
15 and then further recommendation may come about to a full
16 Commission level, but at least you would know that your
17 response has been heard and a request has been heard,
18 there is some dialogue within the minds of the
19 subcommittee for partners, and then some items may go up
20 to the Commission level and develop further into an effort
21 with the help of the DEQ expertise, and some items are
22 still inspected, but still not rich enough or ripe enough
23 to merit a Commission level or a subcommittee
24 consideration.

25 But that's what I would love for you to enlighten

1 them so that you don't feel excluded, but this is not an
2 artificial body who wishes to discuss only five items and
3 not seven artificial, but that's my suggestion.

4 CHAIRPERSON CLEMENT: Thank you very much. I
5 think you summarized that perfectly.

6 MS. CHABERSKI: I'm a little confused. For the
7 subcommittee, we make the decision whether it should go to
8 the Commission or do we forward it to the Commission. Can
9 you just clarify that?

10 CHAIRPERSON CLEMENT: Let me just back up. Just
11 give a little framework. We can't address like a specific
12 site. We are supposed to be addressing issues that have a
13 broader context. So if someone said, "Cathy, I've got a
14 problem with X," and you are going to think is X an issue
15 that affects more than that site, so you are going to have
16 to do maybe a little research to see if it's a broad
17 enough issue, not a site specific issue.

18 We've never to my knowledge not brought issues
19 up. That's not ever been the approach of this Commission.
20 We are never trying to shut anybody down. We may not
21 agree with people and may not agree with them fairly
22 frequently, but we do not try to shut any kind of issue
23 out of consideration, ever. I mean, it's just the
24 trickiness of determining whether it's a site specific
25 issue versus moralistic issue.

1 MS. CHABERSKI: Well, I also see where it may not
2 be something that needs to be addressed at the Commission,
3 but maybe ADEQ policy or answer from DEQ of something in
4 place. I'm not sure what comes through the committee but
5 I guess I will just wait and see.

6 MS. MARTINCIC: They did it through the
7 Commission. I mean, I don't go to the technical committee
8 meetings really because I'm not a technical person, but
9 those issues would come to the full Commission and Hal,
10 who was the prior subcommittee chair, would often have a
11 list of things that were maybe more policy oriented and
12 would be asking whether or not DEQ could sort of clarify
13 certain policies or clarify the way that they've been
14 treating certain issues in regards to applications or
15 technical issues, and then, if I remember right, the
16 commission would kind of vote as a whole, okay, we would
17 like to recommend that the agency look at this further or
18 work with the Technical Subcommittee to develop
19 clarification.

20 MS. CHABERSKI: I wanted to make sure what our
21 appropriate actions are so that the concern is addressed
22 depending on what point it is.

23 MS. MARTINCIC: He would often have quite a list
24 of different things that people had brought up to him.

25 CHAIRPERSON CLEMENT: You see, you get the

1 contact with the consulting. He had a great relationship
2 and he would bundle them up and evaluate them, you know.
3 He's a pretty experienced gentleman. Then he would bring
4 them and say this one I think we need a policy on,
5 statement from DEQ, and, Commission, what do you think.
6 This one we may need to be massaged more in a technical
7 subcommittee, we need to talk about that. So he would do
8 that evaluation.

9 MR. O'HARA: I want to get clear on one thing,
10 what her question was, and I have the same question is.
11 This is from the evolution of the Commission back in the
12 early days what happened, consultants or anybody would
13 call the chair of the subcommittee and say, I'd like to
14 discuss this issue, so the subcommittee chair would from
15 the very beginning kind of do its own agenda and be
16 working on the issues and bring it to the Commission and
17 say, we made a decision as the Commission that we wanted
18 the subcommittee chairs to come to the Commission and say,
19 do you want us to look at these issues, because otherwise
20 they were sending time on issues that we might not even
21 want to look at as a Commission.

22 So we try to -- it gets a little bit difficult
23 because there may be an issue that needs to be discussed
24 immediately, but there is a time line because now it's got
25 to go through subcommittee and got to come back to the

1 Commission and say, do you want to discuss it, and he goes
2 back to the subcommittee and discusses it, and bring it
3 back in another meeting to us. So it creates like a two
4 or three-month delay, but that way he wasn't just wasting
5 all of his time on things that the commission didn't want
6 to look at it.

7 CHAIRPERSON CLEMENT: There is a time efficiency
8 thing there.

9 MR. O'HARA: I think the answer is the way we
10 decided it, and I don't know if we want to change it, but
11 the subcommittee chairs had to come through the Commission
12 to find out if the Commission wanted him or her to spend
13 their time looking at that issue.

14 CHAIRPERSON CLEMENT: Since I've been on the
15 Commission, that's how we handle it.

16 MR. VYAS: Madam Chair, what Mr. O'Hara said,
17 that's still a very, very solid approach in a Commission
18 body, and the only additional one I want to add is the
19 subcommittee chairs and the co-chairs have their expertise
20 that we entrust automatically who would have the ability
21 to receive a concern and simply decide whether, is this
22 something that may happen in isolated cases, because as a
23 Commission we are looking at the broad Arizona wide
24 picture. If it looks like something that may affect the
25 large majority of the people's objective to the UST, then

1 that is when that judgment can be translated into the
2 following meeting in saying, hey, this is what we have
3 heard, this is our thinking, it might become a policy
4 issue, then come back immediately to the next meeting and
5 say, there dose the Commission at large feel we ought to
6 look into it. Then plan, come up with a time line of
7 action, 18 months, or whatever, and seek help from DEQ and
8 the data bases. But that way they're not wasting a time
9 that on something that may not be a Commission worthy
10 consent, at the same time they responded to the concern
11 and applied the policy versus incident site X issue, and I
12 think that's the way to handle it.

13 That way we are being responsive, the judgment
14 has entered into play, and they know when to seek the
15 Commission's approval before expending the resources of
16 their own. That's my suggestion. That would be great,
17 but I think the structure is solid.

18 MS. MARTINCIC: I agree.

19 MS. CHABERSKI: In summary, that's how we're
20 going to operate?

21 CHAIRPERSON CLEMENT: That's how we have.

22 MS. CHABERSKI: I guess I lost a little about the
23 subcommittee and using our own subjectivity.

24 CHAIRPERSON CLEMENT: I think when you get
25 feedback from various people, sometimes I get feedback and

1 it's only one site, and you can tell there is a axe going
2 on between whomever and whoever. And I try to pull out of
3 that the general issue, but if you can't, if it's just a
4 site-specific issue, you really don't want to bring that
5 up to the full group.

6 MS. CHABERSKI: So you can make that very simple,
7 easy judgment, you can do that?

8 CHAIRPERSON CLEMENT: I dent think it's going to
9 be really hard. I really don't. I think you are going
10 to know.

11 MS. CHABERSKI: I'm just want to make sure I'm
12 operating in the correct procedural way.

13 CHAIRPERSON CLEMENT: If you have any questions,
14 you know, just pick up the phone. We are here to all work
15 together. This has been a very nice professional group of
16 people to work with, and I think it can only be better in
17 the future.

18 MS. KALAGHAN: I have something I want to make
19 sure I understand. Hypothetically, let's deal with
20 hypothetical, like what the issue that Leon has brought to
21 my attention. At what point would I bring that to the
22 Commission's attention to determine whether we wanted to
23 move on addressing it to a subcommittee? Would that need
24 to have gone on the agenda in advance or do you have
25 issues to bring to the Commission.

1 CHAIRPERSON CLEMENT: We would have preferred
2 that it went onto the agenda in advance and that there was
3 an agenda item that said, assigning, decision to assign
4 technical subcommittee issue.

5 MS. HUDDLESTON: Yes. If it's not on the agenda,
6 you can't vote on it.

7 MR. O'HARA: We do have a general agenda, deciding
8 on agenda items, deciding -- we're not really having
9 substantive discussion on it.

10 MS. HUDDLESTON: You are putting it on the next
11 agenda to make a decision. That's fine. Yeah.

12 CHAIRPERSON CLEMENT: You can put it on an
13 agenda. If you have specific information, the more
14 specific you can be, the better. You have some broader
15 statement, it's better we do have some broader statements
16 in here that cover, you know, setting up next time's
17 agenda, like if we sat here today and said, next time I
18 want to talk about X. It's on the agenda for next time
19 then.

20 Is that -- is everybody pretty as clear as we are
21 actually moving through the process?

22 MR. O'HARA: Let's continue her hypothetical,
23 which is not really a hypothetical. If he's got an issue
24 that is discussed today and he wants to have it on the
25 agenda. So instead of -- and I think is it not

1 appropriate to now say should the subcommittee discuss
2 that issue?

3 CHAIRPERSON CLEMENT: Yes. This would be when we
4 set up this next agenda item, it would be the point in
5 time where the Technical Subcommittee would suggest we
6 would like to have this on our next if they felt it was
7 appropriate to have it on.

8 MS. CHABERSKI: Or isn't the Commission deciding
9 whether it will be addressed?

10 CHAIRPERSON CLEMENT: I don't have a sense of
11 whether that issue -- again, we really have to be careful
12 not to talk about the issue. We're not supposed to talk
13 about a specific issue, which is why I'm uncomfortable
14 talking about it right now.

15 MS. CHABERSKI: I'm not thinking of his issue.
16 I'm just saying that an issue may have typically facets,
17 maybe potential policy, it may be hard-core technical, it
18 maybe someone that's just upset. That's all I'm saying,
19 but we can't even talk about that if it's on the agenda if
20 we have questions to try to hash that through to see if
21 it's appropriate formally with the members; correct?

22 CHAIRPERSON CLEMENT: Exactly. And if you both
23 or anyone had enough knowledge at this juncture to say
24 that issue is something that I want to set up on the next
25 agenda while we sit here today or even later, we would put

1 it on the agenda. The awkwardness of it is it is not on
2 the agenda.

3 MS. CHABERSKI: No. I understand that. I'm
4 talking future.

5 CHAIRPERSON CLEMENT: We could definitely today
6 say, or later you could call me or e-mail me and say, I
7 would like X on the agenda.

8 If you want the Policy Commission to say to you
9 as a technical subcommittee we want the technical
10 subcommittee to work on this issue, then we have to have
11 that on the agenda to vote on it. Do you see what I'm
12 saying? It's awkward but that's the way it is.

13 MS. KALAGHAN: I think we should decide today to
14 put it on the agenda for next month.

15 CHAIRPERSON CLEMENT: Okay.

16 MS. MARTINCIC: I would ask Bill, should we put
17 our two issues on the agenda for the next meeting?

18 MR. BUNCH: Sure.

19 MS. MARTINCIC: That way the Energy Act
20 implementation, then the evaluation of it.

21 MR. MC NEELY: Should we move from public
22 comment, or is there any other public comment.

23 CHAIRPERSON CLEMENT: Well, we didn't have any
24 other public comments.

25 Are there any/ I think we do have one.

1 We do have another public. Please identify
2 yourself.

3 MR. MORGAN: Rick Morgan. I'm sitting here
4 listening to this bantering back and forth about getting
5 something on and into the subcommittees. And Leon brought
6 up a point to his contact on the committee. What if you
7 made each agenda the agenda for next meeting would be a
8 subcommittee update/new issues, or something?

9 Then Leon brings up an issue with either the
10 subcommittee chair or a Policy Commission Member, and at
11 that point the Policy Commission Member or the
12 Subcommittee Commission Member could say, I've been --
13 it's been brought to my attention that run times are an
14 issue. I believe this needs to be put into subcommittee
15 for evaluation, then you can vote on it right there?

16 MS. CHABERSKI: Doesn't it already have to be on
17 the agenda to address?

18 MR. MORGAN: You've got it on the agenda. You
19 are asking for issues.

20 CHAIRPERSON CLEMENT: We can't have a dialog.
21 Time out. This is a public meeting. We have to conduct
22 ourselves with a statement, and then we can talk about
23 that statement, but if we can.

24 The reason we are in this difficulty today is we
25 didn't have a Technical Subcommittee chairperson for

1 anyone to bring that agenda to and then that Technical
2 Subcommittee Chairperson to put it on the agenda. Had
3 someone called me or e-mailed me ahead of this meeting in
4 time to put it on the agenda, it would be on the agenda.

5 So, we are in a little bit of a do loop here
6 because we had no one in that responsibility. It is not
7 because we have a failed process. The process failed
8 today because there was no one in that assignment and no
9 one communicated to the chair until this morning.

10 So, you know, I think we should back up. We have
11 often had an agenda item called new issues under the
12 subcommittees, but we had somebody who had that role who
13 could present the new issues. We can't have it presented
14 from the public when it's not on the agenda, so that's the
15 difference.

16 If in the future we have a problem getting
17 legitimate regulatory or policy or technical issues on our
18 agendas, please contact me if it's not working. But I
19 think we have had it working in the past and I think we
20 had a little bit of a problem because we have had two or
21 three months without anybody in that role. So that would
22 be my suggestion.

23 Continue on.

24 MS. CHABERSKI: Thank you for the clarification.

25 CHAIRPERSON CLEMENT: We have to be really

1 careful with the public comments, and not that we want to
2 shut down anybody's comments, we really appreciate you
3 being her and really appreciate comments.

4 MS. CHABERSKI: For future meetings, this is new
5 member stuff, but maybe it's good we hash it out. When
6 there is a call to the public, there usually isn't a
7 dialogue in other meetings?

8 CHAIRPERSON CLEMENT: Right.

9 MS. CHABERSKI: It's a call to the public. You
10 make a comment. Then if somebody wants to go procedurally
11 through the Commission, they do so.

12 CHAIRPERSON CLEMENT: Exactly. And why we took
13 the first agenda issue because we had already talked about
14 it. And so it was just a further discussion or
15 clarification, because obviously if we had a call from the
16 public it wasn't clear. So that's why I took that item
17 and had further discussion about it so that we were at
18 least sure where we were going from here. But I really
19 have to be careful with that, because it's not fair to the
20 public if it's not on the agenda to talk about.

21 Then to back us up, per -- and I hate to keep us,
22 this is such a long meeting, but per Ms. Huddleston's
23 suggestion, we should vote on our Commission assignments
24 and name change.

25 So, if I could have a motion to suggest our two

1 new co-chairs for the Technical Subcommittee, do I have a
2 motion?

3 MR. MC NEELY: I move to continue on with the
4 Technical Subcommittee as Theresa Kalaghan as a co-chair
5 and Cathy Chaberski as a co-chair.

6 CHAIRPERSON CLEMENT: I second that motion.

7 All in favor?

8 (Chorus of ayes.)

9 CHAIRPERSON CLEMENT: Anyone opposed?

10 The motion passes.

11 The second motion we are looking for is the
12 Financial Subcommittee name change and the assignment of a
13 co-chair.

14 MR. MC NEELY: I move that we change the name of
15 Financial Subcommittee to Evaluation Subcommittee and
16 assign Andrea Martincic and Bill Bunch as the co-chairs.

17 MR. VYAS: I second that.

18 CHAIRPERSON CLEMENT: Second that motion? All in
19 favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: Anyone opposed?

22 Okay. Great.

23 And then the third item we wanted to vote on was
24 the assignment of the two agenda items for the Evaluation
25 Subcommittee.

1 MS. MARTINCIC: That won't be until the November
2 meeting, so we could do that in October. I just wanted to
3 make sure it was on agenda. Do we vote for agenda items?

4 MS. HUDDLESTON: You can vote to put that on the
5 agenda item.

6 MS. MARTINCIC: I move that the two issues for
7 the Evaluation Subcommittee to look at include the Energy
8 Policy Act implementation as well as looking at other
9 statements, phaseouts of the Assurance Fund.

10 MR. MC NEELY: I second it.

11 CHAIRPERSON CLEMENT: All in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON CLEMENT: Anyone opposed?

14 Okay. I think we've got through most of that.

15 Thank you everybody for being here. We do not
16 want to shut down any important agenda items. Please
17 don't take that in any way, shape or form. We are
18 interested in what you have to say, very much so.

19 Let's see. We've gone through the agenda items.
20 If there are any other agenda items, please let us know
21 now, or get ahold of me by e-mail or telephone.

22 I'm going to do a real quick summary of the
23 action items.

24 If you need your Tier II software, DEQ has it.
25 They are going to provide a notice on the Internet

1 availability of the web site, download availability when
2 it is available.

3 Andrea Martincic and DEQ are going to work
4 together regarding another notice about basically if you
5 are going to do corrective action, now is the time or you
6 are not going to have time to do it to have it be paid
7 out.

8 MS. MARTINCIC: DEQ has another notice about the
9 other application.

10 CHAIRPERSON CLEMENT: Right. You were going to
11 put a notice on the web.

12 The revised legislation was going to be sent out
13 to stakeholders including the Policy Commission Members.

14 I think that was all the ones I captured.

15 Anybody else have anything else that we didn't
16 capture?

17 Okay. Any other topics, items for discussion?

18 Thanks everybody for being here. I appreciate
19 your time and your willingness to participate and do work.

20 Thanks so much. The Policy Commission meeting is
21 adjourned. Thank you very much.

22 (11:22 A.M.)

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CERTIFICATE

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 106 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 26th day of September, 2007.

Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477