

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
December 12, 2007  
9:00 a.m.

Location: 1110 W. Washington  
Room 145  
Phoenix, Arizona

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1 COMMITTEE MEMBERS PRESENT:

2

3 Gail Clement, Chair

4 Philip McNeely

5 William (Bill) Bunch

6 Catherine Chaberski

7 Jon Findley

8 Manoj Vyas

9 Karen Gaylord

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1 PROCEEDINGS

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3 CHAIRPERSON CLEMENT: Welcome, our sole  
4 participant here. I guess everybody is so happy with the  
5 program we may need not to do this.

6 Good morning everybody. It is December 12th.  
7 This is the UST Policy Commission meeting, and we will  
8 start with the call to order, and, Mr. Findley, if you  
9 would start, please.

10 MR. FINDLEY: Jon Findley.

11 MR. VYAS: Manoj Vyas.

12 MR. MC NEELY: Philip McNeely.

13 CHAIRPERSON CLEMENT: Gail Clement.

14 MS. CHABERSKI: Cathy Chaberski.

15 MS. GAYLORD: Karen Gaylord.

16 MR. BUNCH: Bill Bunch.

17 CHAIRPERSON CLEMENT: I think we've got a good  
18 attendance this morning with the Policy Commission. We  
19 have -- just as an announcement, the Governor's Office has  
20 replaced Andrea Martincic with a gal from Safeway, Inc.,  
21 and her name is -- hold on a second -- Trisha Johnsen.

22 MR. MC NEELY: Right.

23 CHAIRPERSON CLEMENT: And she will be joining us.  
24 I spoke with her, I think it was Monday. I spoke with her  
25 and she will be joining us in January.

1 And Andrea was maybe going to attend, but she's  
2 not here yet, so maybe we will just hold off and see if  
3 she does arrive.

4 MR. MC NEELY: Okay.

5 CHAIRPERSON CLEMENT: And there is Cynthia.

6 Well, I'm skipping around a little bit.

7 And we also are losing Cynthia Miller. We are  
8 losing Cynthia Miller to her retirement, and she's doing a  
9 start-up business for start-up businesses.

10 MS. MILLER: Yes, ma'am.

11 CHAIRPERSON CLEMENT: And I personally want to  
12 thank you so much for all that you've done to help me and  
13 my job and help the Policy Commission stay on point, get  
14 our agendas out, getting the meeting minutes out,  
15 everything that lacks excitement and glamour, Cynthia was  
16 the one who was in the trenches doing it.

17 So thank you very much.

18 MS. MILLER: You are welcome.

19 CHAIRPERSON CLEMENT: I really appreciate your  
20 work. And I'm not sure who's replacing Cynthia, if there  
21 is anyone.

22 MR. MC NEELY: Not yet, but her duties will be  
23 split up among different people. For right now my  
24 secretary will be handling the agenda, things like that.

25 CHAIRPERSON CLEMENT: So I e-mail you or Ron? I

1 can assume it will go to the right person?

2 MR. MC NEELY: Right. We will have her e-mail  
3 all of you so you will know her e-mail address.

4 CHAIRPERSON CLEMENT: Great. Okay. Now I guess  
5 we will get on to the official business. The approval of  
6 the minutes from the October 24th, 2007. Did everybody  
7 receive a copy?

8 MR. BUNCH: Yes.

9 CHAIRPERSON CLEMENT: Did you have a chance to  
10 review them? And are there any comments, changes, edits?

11 Okay. Is there a motion to approve the meeting  
12 minutes from October 24th?

13 MS. CHABERSKI: I move to approve the minutes.

14 MR. VYAS: Second it.

15 CHAIRPERSON CLEMENT: All in favor?

16 (Chorus of ayes.)

17 CHAIRPERSON CLEMENT: Anyone opposed?

18 Okay. The October 24th, 2007 meeting minutes  
19 have been approved.

20 We will skip number three and hopefully Andrea  
21 will make it today, but then we will move to No. 4, the  
22 ADEQ updates.

23 MR. MC NEELY: ADEQ updates. If you want to look  
24 in your packet, we added a couple of things that weren't  
25 e-mailed to you. One is the Periodic Reporting Corrective

1 Action Information. This was put on the bulletin. I  
2 guess it's already on the bulletin right now. We've been  
3 having some issues about consultants submitting periodic  
4 status reports and at the same time submitting like an  
5 annual report and a groundwater monitoring report, so we  
6 have three separate reports. So we just want to make it  
7 clear what our reporting requirements are, because what  
8 happens, they will submit three different reports and then  
9 submit SAF applications for all three different reports.  
10 They will put it all in one report. We don't want to have  
11 three different reports, so that's why we put this out  
12 there. This is nothing new. It's in our rule. We  
13 clarified our rule with a bulletin.

14 CHAIRPERSON CLEMENT: Could I just ask the  
15 question, the frequency of reporting and the frequency  
16 will be requested of groundwater sampling if applicable  
17 will be as requested by ADEQ, or as approved, so one way  
18 or another they have a specific time frame that they  
19 should know about, and that's what they have to meet?

20 MR. MC NEELY: Right. And the way it should work  
21 is before you have your site characterizations report  
22 done, you shouldn't be submitting information to us. You  
23 should get the report done, the site characterization  
24 report submitted, and then when we write our approval  
25 letter or requesting a CAP letter, we will say, please

1 conduct semiannual sampling on these wells, or if it's in  
2 the CAP, we will say please submit a CAP and the CAP  
3 should say what your sampling frequency would be, and then  
4 we'll approve the CAP. So, once you have it, everything  
5 should be spelled out in the letter or in the Corrective  
6 Action Plan.

7 CHAIRPERSON CLEMENT: Is the problem between -- I  
8 can see our audience shaking his head. Is the problem  
9 between when somebody would get those comments and when  
10 they've submitted their most recent documentation, is that  
11 sort of a no-go zone there?

12 MR. MC NEELY: No, that's not, really. It can be  
13 different things, but there is some situations where you  
14 have an STD system running, so they will do an O&M report.  
15 And then they'll do a groundwater report in the same  
16 period and have a separate groundwater report, and then  
17 some consultants are submitting these annual site status  
18 reports, that are not really O&M, or not even groundwater,  
19 so we'll have different reports. And we don't want to  
20 review three different reports and we don't want to pay  
21 for three separate reports, so we're trying to make it  
22 clear, put it all in one report.

23 CHAIRPERSON CLEMENT: Okay.

24 MR. MC NEELY: If there is a question, we are  
25 also willing to say -- talk it out, you know.

1 CHAIRPERSON CLEMENT: Okay.

2 MR. MC NEELY: Okay. And then I will save this  
3 one for later.

4 We will just go through our packet. We will  
5 start with the SAF numbers, and you can see October,  
6 November numbers. November we reviewed 100 applications  
7 and we received 65. So since that Senate Bill 1310 went  
8 into effect, you can see that the numbers are dropping in  
9 terms of applications received, so, to refresh your  
10 memory, that was only one application is acceptable per  
11 facility per month, and before we used to have multiple  
12 applications.

13 So, you can see in August we had 111, in the  
14 middle of September this went into effect, we had 86, and  
15 then in October, November we had 72 applications, 65, and  
16 I think they will level off around there, 65, 70.

17 And we had have the potential to process a  
18 hundred or more, even, a month, so we should be okay with  
19 processing these applications more quickly, and spending  
20 more time on them, actually, so there is no errors.

21 We still have -- if you look, we have a total of  
22 151 applications in-house and none are over 90 days, and  
23 that's by statute, we're supposed to review them within  
24 90 days.

25 I will flip over to the appeals page. In

1 November we had 35 informal appeals requested. We  
2 processed 32 informal appeals. Last page. And then  
3 formal appeals, we had 10 received and 5 determinations  
4 made. So we have not had a formal hearing in a while, so  
5 we did not have one in November. There are a few  
6 scheduled for January, but they tend to get postponed.

7 CHAIRPERSON CLEMENT: Or settled.

8 MR. MC NEELY: Or settled.

9 Can I answer any questions for SAF or move on to  
10 the corrective action?

11 Okay. The corrective action numbers, at least  
12 the ones that have LUST statistics, new LUST numbers  
13 assigned. It's really come to almost a screeching halt.  
14 We had one LUST number assigned in October and two in  
15 November, which is pretty impressive since we've been  
16 doing a lot of inspections. We're out there doing them,  
17 and only two reported.

18 Closed, the closures are slowing down, too. We  
19 only had 6 closed in November and 5 in November. If you  
20 add it all up, we have 85 percent of our LUSTs have been  
21 closed and 15 still open. So we have 1265 LUST numbers,  
22 and not all of those are SAF eligible. I'm trying to get  
23 our database to actually let me know which ones so I can  
24 differentiate the ones that are SAF eligible and the ones  
25 that are not. I'm trying to focus on by June 30, 2010

1 when the eligibility sunsets.

2 Corrective action documents pending in-house,  
3 it's really very limited. We have 8 site characterization  
4 reports in-house, 3 CAPs we're looking at, 1 CAP mod, and  
5 3 closure requests. So, it's slowed down a lot. We're  
6 doing case management. We're trying to just push these  
7 sites through, the ones that are remaining.

8 MTC program is still going strong. 143 tanks  
9 removed. We hired a new person -- I mentioned that last  
10 week or last month -- to really push this program because  
11 there are a lot of tanks out there that they are still  
12 sitting on the side of the road that no one's reported to  
13 us, so his job is to go out and find them.

14 So far we're working from Flagstaff to Kingman,  
15 and there is quite a few facilities, probably over a dozen  
16 that are not in our database, never been reported, and  
17 there are tanks in the ground. So I think if we do that  
18 all across the state we're going to find a lot more tanks.

19 CHAIRPERSON CLEMENT: In terms of USTs, these  
20 numbers, is this the program to date since your inception,  
21 or is this just fiscal year?

22 MR. MC NEELY: The MTCP program?

23 CHAIRPERSON CLEMENT: Yes.

24 MR. MC NEELY: Yes, that's program to date. And  
25 if you divide that through how much money -- we had 2.3,

1 2.4 million, and we spent about 1.1 million to get to that  
2 point. So if you divide it, it's like \$8,000 a tank, or  
3 something like that, if you do the math.

4 CHAIRPERSON CLEMENT: Thank you.

5 MR. MC NEELY: You are welcome.

6 And Tier 2 software is not on there, but we  
7 haven't really had any questions and we haven't had any  
8 complaints about it. It's not on the web yet. We've done  
9 everything to get it on the web. It should pop up there  
10 any day now. It just hasn't. There are some computer  
11 stuff that had to be taken care of on the web that had to  
12 be put up there to be downloaded, but that should happen  
13 in the next couple of weeks.

14 CHAIRPERSON CLEMENT: Have people been able to  
15 acquire it from DEQ directly?

16 MR. MC NEELY: We have those CDs, and we've had a  
17 few calls but not a whole lot. So I don't know if anyone  
18 is not doing Tier 2s or -- we can do it in-house.

19 Well, that's it for the ADEQ updates. Questions?

20 CHAIRPERSON CLEMENT: Any program challenges  
21 right now? I'm sorry. Mr. Bunch, why don't you go ahead.

22 MR. BUNCH: Okay. Phil, I just wanted to ask  
23 about the number of new LUSTs that were reported, one in  
24 October, two in November. I think last meeting we  
25 obtained some historical data on LUST cases per month.

1 Can you refresh my memory on typically how many we would  
2 see historically per month?

3 MR. MC NEELY: Last year we had about 35, 36 for  
4 the year, so that's about three to four a month. I think  
5 the year before that we had about the same. Then it was  
6 about 70 like two years ago. But back in the late '90s  
7 and 2000, it was in the thousand range. Well, we were  
8 pulling all the tanks out, but it's dropped from 70s to  
9 30s. Now it looks like we're going to be 20 some range,  
10 30 range. It's going down.

11 MR. BUNCH: I mean, my concern, and I think  
12 probably a lot of us share this, is when you don't have  
13 the State Fund anymore, you've taken away some incentive  
14 for some operators to discover and then report suspected  
15 releases, and I know it's impossible to tell. You had  
16 mentioned that even though you have a lot of inspection  
17 work going on that there was very few LUSTs reported.

18 Has it been your experience that your inspections  
19 drive the suspected release reporting historically?

20 MR. MC NEELY: We find a lot in our inspections,  
21 a lot of the inspected releases.

22 So, I will just tell you a little bit about the  
23 inspections. In the past we had about three inspectors,  
24 sometimes three, sometimes two. We would do like 500  
25 inspections a year. Now we have five inspectors, so we're

1 on pace to do well over a thousand this year, and out of  
2 2,600 facilities, so historically we do inspections every  
3 four to four and a half years.

4 Now we're really looking, by the Energy Act we're  
5 supposed to every three years, but we're way ahead of  
6 pace. Last year we did like 1,080 inspections, so we're  
7 at about a two-year pace. And I think going out and  
8 talking to these people really is paying off.

9 And we had that school project I mentioned last  
10 month. We personally visited every school person that is  
11 in charge of the tanks. We've given them notebooks, how  
12 to go through the numbers, you know, your tightness test  
13 information. This is how you should manage your tanks.  
14 And they take the books, and they are all with open arms  
15 just accepting this help, and these aren't inspections.  
16 These were compliant assistance.

17 So, I think it's just got to help with not having  
18 releases when you really have educated people running  
19 these systems. I know we've done that with -- a couple of  
20 other companies have asked us to do that. We've been  
21 doing that quite a bit.

22 So, I think with the extra inspectors, not only  
23 the inspections are going to help stop releases, but  
24 actually training people during the inspections and the  
25 frequency of inspections will help.

1       And I was going to prepare this for the next  
2 couple of months, but Ron Kern gave me a little statistic  
3 from -- and whenever he gives me something, I always  
4 report on it, so he has to watch out what he gives me.  
5 But it's the statistics from reported releases and  
6 operating tanks, the history of the program.

7       And in the past it was -- like back in '98 or so,  
8 it was like one release per every 15 operating tanks, and  
9 as the years went by, it's been dropping. It went from  
10 like 1 to 15 to 1 to 30 to like 1 in 70 a few years ago,  
11 and now it's 1 to 150 tanks. And this trend has been  
12 happening regardless of the SAF being sunsetted. It's  
13 been going down and down and down, and I've been trying to  
14 get that information for the whole national trend across  
15 the country, but it looks like, at the very minimum, I  
16 think the releases that are reported are less severe. We  
17 don't see any new releases that are massive groundwater  
18 contaminated sites. It seems like they're soil-only  
19 sites. They can get closed pretty quickly, a few borings,  
20 so I think that's going to help, so I think it is real  
21 numbers, but at the same time I agree with you, there may  
22 be a reason not to report.

23       MR. BUNCH: I mean, what I have noticed for us is  
24 generally it's either a real estate transaction or  
25 investment with the UST removal that might drive a

1 discovery. Obviously when we report releases as  
2 operators, we're not telling you, you know, what drove  
3 that discovery. But sometimes if it was a Phase II report  
4 or a monthly monitoring failure, it might be interesting,  
5 if it's possible, to sort of collect that data, then we  
6 will be able to tell, you know, are we having fewer real  
7 estate transactions or are fewer people removing tanks,  
8 or, you know, are you already finding fewer releases based  
9 on a monthly monitoring technique. Because that might  
10 help us discern whether or not we've got repression in  
11 reporting or we're actually getting better, you know, at  
12 operating USTs or the equipment's functioning better  
13 overall.

14 MR. MC NEELY: I think we're trying to track when  
15 the releases, or how -- where they came from, what  
16 component. But I'm not sure, Ron, what kind of database  
17 do that have or do we actually get all that information?

18 MR. KERN: Yeah. Ron Kern from DEQ. The Energy  
19 Policy Act requires us to report on inspection datas on an  
20 annual basis and we started collecting those data on  
21 October 1st, so we will be reporting out in 2008 in  
22 December all things related to inspections pretty much,  
23 compliance issues, and it also requires to report on  
24 release statistics and where did the release come from, if  
25 its known, things like that.

1       So, at least we'll have an idea where things are,  
2 what's happening, when it's happening, where it's  
3 happening with the UST system.

4       The other thing, just to stress what Phil was  
5 saying about the inspections, we are lifting lids, we are  
6 looking at the UST system without actually getting into it  
7 per se. But we are also looking at all the release  
8 detection documentation, which is pretty much what the  
9 owner/operator is going on, too, if they're not  
10 permanently closing and digging up the system.

11       So, we are out there more or less auditing what  
12 the owner/operator should be looking at on almost a daily  
13 or weekly or monthly basis. So, we're right behind the  
14 owner/operator on that, too, so, we're seeing suspected  
15 releases but they're not panning out into confirmed  
16 releases.

17       MR. BUNCH: Gotcha. Thank you.

18       CHAIRPERSON CLEMENT: That's excellent. That's  
19 exactly where you wanted to move the program, which was  
20 being ahead of the curve instead of picking up behind it.  
21 I'm really impressed. We really moved that in some good  
22 directions.

23       MR. FINDLEY: Do you find -- are you working with  
24 agricultural groups as well? Are you finding tanks on  
25 agricultural land?

1 MR. MC NEELY: We only work with the tanks that  
2 we actually regulate, so if it's an ag tank, we don't  
3 regulate it. And if you are asking about the Municipal  
4 Tank Closure program? I think if they found a tank,  
5 someone probably would look at that, too. I don't think  
6 we'd necessarily say no, it's not regulated by us. We'd  
7 probably look at it and try to figure out first.

8 But I haven't had any of those come across and  
9 say, this was an ag tank, we can't pull the tank. So they  
10 are probably still out there to answer your question.

11 MR. FINDLEY: Just like the Route 66.

12 MR. MC NEELY: Right. They're probably still  
13 there.

14 CHAIRPERSON CLEMENT: Because they are in  
15 agricultural areas, they're probably less problematic and  
16 you don't know about them.

17 MR. MC NEELY: That's probably true.

18 MS. CHABERSKI: You mentioned you had a booklet  
19 or a handout for the schools. Is it on the web or can  
20 folks get a copy through someone?

21 MR. MC NEELY: These are actually specific to the  
22 school. So, what we did is, we got their last tightness  
23 test information, their last registration information, so  
24 we went and said this is the information that we have in  
25 our files. You have two tanks. Is that right? You have

1 this? Then we flip it over. Your tightness test, your  
2 last data said this, and we just go through all of them.

3 MS. CHABERSKI: So, it's not a general complaint.

4 MR. MC NEELY: It's very specific. It says this  
5 is what you need to look for, so it's not really on the  
6 web.

7 MS. CHABERSKI: Okay.

8 MR. MC NEELY: Any questions?

9 CHAIRPERSON CLEMENT: Very good. Okay. If there  
10 are no other questions or discussions, we will move on to  
11 the discussion of recent legislation and rules, again with  
12 Mr. McNeely.

13 MR. MC NEELY: We did get the Monitored Natural  
14 Attention rules, went through the Governor's Regulatory  
15 Review Council on the set agenda. There was no  
16 opposition. We did have one set of comments from the City  
17 of Phoenix, but that was -- really the comments were in  
18 support. They had some comments but it was in support of  
19 the rule in general.

20 So, they went through. They will be in effect on  
21 February 2nd, and I passed out this that we're -- I guess  
22 we are going to e-mail this to everybody and put this on  
23 the website. That's the handout you should have in your  
24 packet. It just talks about our rules and what they do.  
25 So February 2nd they will be effective, which means two

1 things, that you can start closing sites that exceed water  
2 quality standards if we follow this process. And we also  
3 -- we have the MNA program set up. But the MNA program is  
4 not real critical right now, 'cause we do have -- the  
5 money doesn't get put into the account until June 30 of  
6 2011, so we have to have all the applications done before  
7 June 30th, 2010, so we still have probably about a year  
8 and a half before we have to really start worrying about  
9 have they submitted their CAPs and reviewed the  
10 applications, so we have some time for that.

11 But for the other program, closure with  
12 exceedence of the water quality standard, that's going to  
13 be good for a lot of reasons. We have quite a few sites  
14 that we've been going through all of our groundwater  
15 sites. There are a lot of sites that have already had  
16 active remediation, the source is gone, the water is not  
17 being used for drinking, it never will be. It's the first  
18 aquifer, sites like Page and Flagstaff, and you have  
19 concentrations that aren't causing any impact to anybody,  
20 and a couple of wells after remediation, those are the  
21 types that we can put it out for public notice and close  
22 the site without spending money that's really not  
23 necessary to do. We're going to try that.

24 We are really going through the files right now,  
25 so in February we'd like to put some of those out for

1 public notice and see how it goes, 'cause, you know,  
2 nobody -- really, we tried to get their water providers  
3 involved, tried to get the City of Tucson and Phoenix and  
4 SRP, and no one really seemed to be too interested, but I  
5 think they may be interested if we close the site next to  
6 one of their wells, so I think the actual going through  
7 the process and sending out notices and say, hey, we're  
8 closing the site, then we will see how much interest we  
9 get. We will probably have more interest at that point.

10 CHAIRPERSON CLEMENT: Are you planning on  
11 starting that program a little slowly so that -- like,  
12 say, here's an example of this type of site, this type of  
13 site, this type of site, put those three out for comment  
14 rather than try to do 25 at once?

15 MR. MC NEELY: We're going through, we want to --  
16 we are going to see -- we will probably pick easy ones  
17 that are basically not going to be controversial. I don't  
18 know if any of them really will be. We look at these  
19 sites. A lot of them are, it's one well next to an  
20 operating station that has 25 benzene after remediation,  
21 it's not really an issue. But some other sites, I think  
22 could become an issue if it's offsite or if it's more than  
23 one, there is actually a plume, there may be some issues.  
24 But those are ones that maybe it's not appropriate, then  
25 we won't close, monitor it. We have the MNA program. And

1 that's what's good about the MNA program. You can monitor  
2 it, so you really feel comfortable that this plume is  
3 pretty much going to dissipate, and then at some point if  
4 everyone's comfortable, then close it. With those two in  
5 conjunction, it will be pretty, I think, comfortable for  
6 people.

7 CHAIRPERSON CLEMENT: Will you start out slowly,  
8 I mean, with the limited number, so people have a chance  
9 to respond to the whole concept and move into it?

10 MR. MC NEELY: Yeah. I think we want to start  
11 off right in February, start off right at the start, but  
12 yet we're not going to have the sites ready to pop off 50  
13 of them. We will do a handful and see how that goes.

14 So, this is another good addition to the program.  
15 The statute in our water quality program had the same  
16 language in it. They did rules. We did rules. All those  
17 rules are different, because petroleum really is quite a  
18 bit different, so their approach is a little bit different  
19 with what's the use of the water, remedial objectives and  
20 our approach is a little bit different, less cumbersome,  
21 but the chemical is a lot more -- biodegrades a lot  
22 quicker, so --

23 MR. BUNCH: Phil, just from a -- sort of  
24 semantics from a mechanic's perspective, when folks are  
25 doing phase I's and whatnot, is there going to be an

1 official category or designation for sites that have their  
2 LUSTs officially closed but they're still being monitored  
3 by the Department?

4 MR. MC NEELY: Right. We have a different  
5 category. Right now when we close a site, I think we call  
6 it closed, basically. It's like a Category 5 in our  
7 thing, but now we will have a different one, like five  
8 with -- I think we came up with another code, what is it,  
9 like W, or something, like water quality exceedence, or  
10 something like that.

11 And what we want to do is get a PDF file on our  
12 website with the data so we can actually see it or make it  
13 real clear that there is a list that you can actually  
14 search, this site is closed, but it has a water quality  
15 exceedence.

16 MR. BUNCH: Thank you.

17 MR. MC NEELY: We will be free about four. We  
18 want to give --

19 MR. BUNCH: It will be like a EDR that provides  
20 the radius maps and whatnot, would they be able to  
21 designate that they're, even though it's officially a  
22 closed lot, that there is still activity going on by the  
23 State?

24 MR. MC NEELY: Well, if it's closed, there is no  
25 activity. It's MNA.

1 MR. BUNCH: Well, the LUST case is closed, so  
2 they're historically looking at that parameter. Now  
3 there's going to be a sort of extra activity going on that  
4 maybe they're not used to that designation or that  
5 situation?

6 MR. MC NEELY: Yes. We will have a different  
7 designation where you will know where it is, but I don't  
8 want to say additional activity, because really there is  
9 no activity. It's closed with water exceedence.

10 MR. BUNCH: Well, you're going to be sampling, I  
11 would imagine.

12 MR. MC NEELY: No. We're going to close it.

13 CHAIRPERSON CLEMENT: There's two different  
14 sites, one that will be closed permanently with water  
15 quality exceedence, and then the other, which will be part  
16 of the monitored natural attenuation monitoring, so there  
17 will be two separate things.

18 MR. MC NEELY: The MNA program. It's not closed.  
19 It's open.

20 CHAIRPERSON CLEMENT: It's open.

21 MR. MC NEELY: The MNA program, we're going to go  
22 out and monitor either until -- we will monitor it until  
23 it's below water quality standards, or monitor it until we  
24 feel like it, until we're comfortable, and whoever is  
25 involved, the cities, wherever you have, is comfortable

1 that we close it.

2       Once it's closed, there is no more activity, but  
3 it will be on a database so people know that it's closed  
4 with the water quality.

5       MR. BUNCH: Just shifting from the RP over to the  
6 State, essentially, once it enters the MNA program?

7       MR. MC NEELY: Yeah. The MNA program, remember,  
8 is only for SAF eligible sites. So, all the sites that  
9 aren't SAF eligible, all the new releases that we have  
10 right now that are coming in or not, they can do MNA, but  
11 it's not on the program that we're paying for. They can  
12 do it on their own.

13       CHAIRPERSON CLEMENT: One of the things that I  
14 recall when I was at DEQ is the complexity of managing  
15 this number of cases by a particular individual or a group  
16 of individuals to make sure you have all of the  
17 information when you go into these closures.

18       Now that you're having case managers, are they  
19 assigned by geographics, or are they assigned by facility  
20 types, or how are you doing that, mainly because the case  
21 managers got to know not just what's going on here but  
22 what's going on around it.

23       MR. MC NEELY: Some of it's geographic and some  
24 of it's spread out. In general, in the past when we went  
25 to case management, we had one person would have Prescott,

1 we really didn't do it this time. We could have do some  
2 enforcement sites.

3 So, I agree with you, in general they will have  
4 the sites around them but not all the time. Plus we  
5 wanted to give people some variation of cities and  
6 different types.

7 CHAIRPERSON CLEMENT: So, how are you going to be  
8 sure that, I mean, even just getting the data from  
9 database is a little tricky, how are you going to be sure  
10 that you're not missing any information making your  
11 decision regarding a permanent closure where there is a  
12 water quality exceedence?

13 MR. MC NEELY: Well, for one, the process is  
14 pretty thorough if you go through it. It has to be --  
15 characterization has to be done, remediation done, source,  
16 source is gone, well inventory, you go through all that.  
17 But then it's going to go up to Joe and my level, every  
18 single closure is going to come to senior management. We  
19 sit around with the case manager, with the unit manager,  
20 with Joe, with me and we look at all the data and say, is  
21 this reasonable, is there any issues at all. We really  
22 have a roundtable discussion on every single closure, so  
23 we've gone through some test runs on how this work, and  
24 we're pretty thorough now, you know. In general if anyone  
25 has any issue, what about this, then it probably wouldn't

1 be ready for closure.

2       Once you look at it and you see most of them are  
3 like one well, no one's going to have an issue with this.  
4 So -- and in reality, most these wells are -- MNA is  
5 occurring, so it will be below water quality standards.

6       We probably could even put that in there, looks  
7 like we'll be below water quality standards in five years  
8 or six years, something like that.

9       CHAIRPERSON CLEMENT: I'm glad that you are  
10 putting that level of comprehensive decision-making, and  
11 particularly at this stage, 'cause you are going to have  
12 some hurdles, I think, as you move forward.

13       MR. MC NEELY: And I think we will, too. That's  
14 why we want to be very careful about what we do, and we  
15 don't want to close something that could possibly migrate  
16 offsite into somebody else's wells. We never want to do  
17 that, but we really don't think that will happen. We've  
18 looked at so many of these sites and there are so few  
19 wells that are impacted, these plumes just keep shrinking.  
20 If you get rid of the source they shrink. The only issue  
21 would be if you missed a source, and that's what you have  
22 to look at, was their source submerged, or something like  
23 that.

24       CHAIRPERSON CLEMENT: Okay.

25       MR. MC NEELY: So, we are going to try to do some

1 training probably in the February time frame, just to talk  
2 about all the stuff we didn't talk about here and it's  
3 really to show you the forms we're trying to use and maybe  
4 some examples of some of the sites that we're looking at  
5 just to give the consultants and the owner/operators an  
6 idea of what they want to know. We don't want them  
7 wasting money doing remediation on a site that we probably  
8 could close, so in February, once we really work this  
9 internal process out, to sit down and talk with everybody,  
10 and not just be a meeting that Joe holds, and we'll be  
11 publicizing that.

12 CHAIRPERSON CLEMENT: I think the key thing that  
13 folks that haven't been involved in this kind of stuff in  
14 the State for a long time, this is really the first time  
15 to my knowledge the State of Arizona has ever said  
16 explicitly if you exceed up to water quality standards,  
17 you are still going to get a clean closure or could still  
18 get a clean closure, so this is a major step, and a major  
19 policy change in terms of the direction the State has  
20 taken historically, so I imagine there will be some  
21 controversy, but I think it's the right direction to go in  
22 personally.

23 MR. MC NEELY: And we're not really authorized to  
24 change the designation of drinking water. We're not  
25 saying that this aquifer is not a drinking water aquifer.

1 We're not even touching that at all. We're just saying  
2 it's not going to impact anybody. We'll give everybody  
3 notice to respond if they think we are impacting their  
4 water rights or their water.

5 CHAIRPERSON CLEMENT: Okay.

6 MR. MC NEELY: The Federal Energy Act, and we  
7 actually provided a copy, and I think the Evaluation  
8 Subcommittee is going to talk about that. But we do have  
9 authority from the Governor's Office to pursue this. We  
10 did have Representative Barnes open up a file for this,  
11 and we want to get -- let counsel draft language as soon  
12 as we can so they can start modifying it.

13 We did change it from last. We've had a few  
14 stakeholder meetings. We modified this a little bit from  
15 the last meeting that Bill had with Andrea, because we  
16 wanted to take into consideration some of the comments.  
17 So, I will let Bill talk about this later, though, but  
18 that is moving forward, and we will have that on -- in  
19 January we will have the docket language filed in January.

20 CHAIRPERSON CLEMENT: Good.

21 MR. MC NEELY: Other rules, there was some issues  
22 with or concern over the administrative rules that  
23 governed formal appeals. That was not actually tank  
24 program's rules, but that was up on the administrative  
25 counsel upstairs, they've terminated that rulemaking

1 process. So, they were at a point where they either had  
2 to file it with the Governor's Regulatory Review or extend  
3 the public comments, or reopen their docket, and they  
4 decided to terminate it and reevaluate what they want to  
5 do with that, because the Chamber of Commerce had some  
6 questions and some other stakeholders, too, so that's on  
7 hold for indefinite. That's all I have.

8 CHAIRPERSON CLEMENT: Great. Shall we turn it  
9 over to Mr. Bunch, then, and he will give us an update on  
10 the Evaluation Subcommittee, and I know you had a meeting  
11 regarding the Energy Policy Act.

12 MR. BUNCH: Correct. It's safe to say that it  
13 was not standing room only, and my thanks to those that  
14 attended, especially Ron Kern. We did kind of review the  
15 draft language that was current at the time, and I think  
16 we did have the benefit of having somebody that  
17 represented the fuel transportation industry attend the  
18 meeting, which I thought was helpful for the Department to  
19 hear their view of the world. And we're certainly going  
20 to work to get them involved. We do have a conduit to  
21 that group of people.

22 And really there were two takeaways from that  
23 meeting. One has to do the with draft legislation. The  
24 other really is just more of a policy issue that I think  
25 DEQ is contemplating with respect to communicating red tag

1 or facilities that have a delivery prohibition.

2 The issue that came up with respect to the draft  
3 legislation has to do with the replacement of a dispenser,  
4 and it was really a concern that I expressed for those  
5 smaller operators who have not installed under dispenser  
6 containment already.

7 Our data suggests for our operating group of  
8 assets is that we have about three drive-offs per facility  
9 per year, so Circle K has about 1800 drive-offs a year,  
10 and quite a few hit dispensers. We probably get about six  
11 or seven dispensers that get knocked off the islands every  
12 year, and I would suspect that that's probably consistent  
13 throughout the network of retail gas facilities.

14 My concern is, a hit dispenser might be the cost  
15 of a dispenser typically for a small owner/operator.  
16 Under this draft rule set or legislation, they would be  
17 required to install a dispenser containment which now  
18 drives a much larger repair, and I'm not sure if that was  
19 the aim of the Department on basically a like-for-like  
20 replacement where maybe you've had a vehicle hit a  
21 dispenser, a fire, or something like that.

22 So, it's just an issue that I don't know if it  
23 warrants further discussion, but it's a concern I've got  
24 for those smaller operators that might be financially  
25 burdensome for a non sort of capital improvement. It's

1 just day-to-day hit dispenser activity, that they would be  
2 forced to do underground work at an extensive cost to  
3 replace that dispenser.

4 The issue -- I don't know if anyone wants to  
5 opine on that or not.

6 CHAIRPERSON CLEMENT: So, how was that addressed  
7 through the legislature? Is it addressed or is it still  
8 an open issue in terms of -- I haven't had a chance to  
9 read this.

10 MR. BUNCH: Under the revision, the verbiage  
11 stands, so the way I interpret the language, if you  
12 replace a dispenser for any reason, you would be forced to  
13 install a dispenser containment.

14 CHAIRPERSON CLEMENT: Thank you.

15 MR. BUNCH: Unless somebody from DEQ disagrees  
16 with that interpretation.

17 The other issue that came up really doesn't  
18 address the draft legislation, but I believe DEQ is  
19 contemplating publishing a list of those sites that have a  
20 delivery prohibition, really in an effort to, I think,  
21 assist the transportation community so that they have an  
22 ability to double-check before they make a delivery.

23 And the concern that was expressed by -- and I  
24 unfortunately can't remember the company he represented,  
25 it was either CAG or Coastal, would be that if they hadn't

1 checked that web page before every delivery, that would be  
2 a major logistical problem for them.

3       And, further, the thought might be, well, they  
4 don't have to check. Well, the reality is that there's  
5 published data, and you don't check, and you inadvertently  
6 make a delivery to a site that's been red-tagged, you are  
7 probably not going to have much of a defense when you are  
8 standing before whoever issues you a violation.

9       So, basically what I think the Department heard  
10 was this sort of nice to do or an outreach effort by the  
11 agency might actually have a negative impact on the  
12 deliverers just because of the logistical constraints of  
13 fuel supply.

14       There are just so many deliveries going on and  
15 there's retails and diversions, and it's a pretty dynamic  
16 process to keep the State supplied with fuel, and it's  
17 just something for the Department to consider. And I  
18 believe Ron has heard those comments, and hopefully we can  
19 get them to submit them in writing, but that's just  
20 something for the Department to consider as you frame out  
21 your program once this goes into effect.

22       CHAIRPERSON CLEMENT: What would be a potential  
23 solution to that situation? I mean, it seems like the  
24 deliverer of the fuel has to know where they can deliver;  
25 right? Would you put the onus on the site to notify the

1 transporter?

2 MR. BUNCH: My recommendation, it may require a  
3 tweak to the language. There is a section that discusses  
4 the penalty to a deliverer who fails to comply with the  
5 requirements, and maybe one way around this would be to  
6 say, if product delivered willfully failed to comply.  
7 That way if you have a recalcitrant operator who removes  
8 the red tag, the liability wouldn't be on the deliverer,  
9 it would really be back on the owner/operator where it  
10 belongs in my mind.

11 And I also believe that if a person finds  
12 themselves, an operator finds themselves in a delivery  
13 prohibition scenario, they have an obligation to  
14 communicate to their fuel supplier that they are unable to  
15 get a delivery. And if there is a retain charge or a  
16 diversion charge, they ought to bear that cost if they  
17 fail to notify.

18 So my suggestion would be to just put the  
19 willful, or whatever term the attorneys believe would be  
20 appropriate, to show the aim is not to penalize the  
21 deliverer for inadvertently doing something, but they  
22 would actually have to then knowingly or willingly violate  
23 the rule.

24 MS. CHABERSKI: I think some of the delivery  
25 people would, you know, like we do with manifests, have

1 them sign something saying that they're in compliance.  
2 That way they would be protected, you know, and there  
3 wouldn't be a he said/she said, so maybe as this moves on,  
4 that's what I would do if I were a deliverer, I'd have two  
5 lines saying I'm delivering this today and you are not  
6 red-tagged and they sign it.

7 MR. BUNCH: On the product transfer document,  
8 bill of lading?

9 MS. CHABERSKI: Yeah. That's outside of DEQ, but  
10 --

11 MR. MC NEELY: The way we think we wrote it is  
12 that the owner/operator's liable if he takes out, removes  
13 a tag, so it's up to him. If someone else even removes a  
14 tag, some worker that not really the owner/operator, it's  
15 some other, the owner/operator would be responsible to  
16 make sure that tag is there.

17 So, really, the responsibility is the  
18 owner/operator to keep that tag on. So, a product  
19 deliverer that shows up and the tag is not there, he's not  
20 really liable. It's the owner/operator who has the  
21 liability to keep that tag on, because we're going to  
22 physically put the tag on, DEQ will.

23 In terms of notifying the deliverers, I don't  
24 know if we need statutory change for that. What we're  
25 trying to do is just -- we have until January -- based on

1 the language, we will have until January 1st, 2009, I  
2 believe, so it gives us a lot of outreach time to figure  
3 out how they want to do it. There are numerous ways. EPA  
4 has come up with a national delivery prohibition database,  
5 which is one way to do it. We think we can do it numerous  
6 ways, get an e-mail list and send it out. We're not going  
7 to do very many of these things at all. This is somebody  
8 who is willfully not complying with our laws, and we think  
9 there is going to be a release and they dump the fuel in  
10 there, so I don't think it's going to happen very often.  
11 Most of our inspections go pretty well, so I think this is  
12 going to be very rare.

13       And looking at other states, like California, it  
14 rarely happens with them and they have so many tanks, I  
15 just don't think this is going to happen very often. But  
16 if it does, we could do a couple of things. We could put  
17 it on our website. We could send an e-mail out to all the  
18 deliveries, if they sign up with their e-mail. Or the  
19 deliverers, like at the meeting, I think, what he said was  
20 he doesn't even care whether they show up. If there is a  
21 red tag on it, he will just charge the owner for making a  
22 -- driving all that way without being able to deliver, so  
23 I think there is different ways of doing it. I think the  
24 liability if -- I think based on what you are saying and  
25 what Ron told me from that meeting, if we notified the

1 deliverers, they feel like they may be more liable and  
2 it's really not their liability. If they fill it up and  
3 there is a tag on it, then they're liable. If there is no  
4 tag on it, they're really not liable. It is the owner  
5 that we are going to go after.

6 CHAIRPERSON CLEMENT: I almost agree with that.  
7 It's easier, certainly thinking about the type of people  
8 that do this work, to see something physical, make a  
9 decision at that point, if not ahead of time, ideally, but  
10 you would always -- and then the deliverer would not have  
11 the specific liability.

12 MR. BUNCH: I think we all agree on the aim.

13 MR. MC NEELY: Right.

14 MR. BUNCH: My concern is dealing with this every  
15 day, the stories I hear from the field, by the time it  
16 gets back to our corporate office, it's completely twisted  
17 around. So, trying to get around whether or not a tag was  
18 there or not at a certain date, at a certain time is going  
19 to be very challenging for everybody, so, if the aim is to  
20 only hold the product deliverer responsible if they  
21 deliver when a tag is present, maybe we can be a little  
22 more explicit than that.

23 Because my concern is that we all know what the  
24 rule means today. Some of us are going to retire, we will  
25 move on. You have new people in, and somebody is going to

1 look at this rule and say, hey, wait a minute, this guy  
2 delivered product. I don't care if somebody removed a red  
3 tag. I think as a general rule, the more explicit we can  
4 be demonstrating our aim in the legislation perhaps the  
5 more successful we will be in that aim being executed long  
6 term.

7 MR. MC NEELY: Can I read to you what we said,  
8 because I think it's about as clear as we can make it. On  
9 49-1097, "Delivery Prohibition" -- we put it right here.  
10 It says, "On January 1st, 2009, a product deliverer shall  
11 not deliver, deposit or place a regulated substance into  
12 an underground storage tank that has a stop-use tag."

13 That's it. I mean, that's plain language. If  
14 there is a tag affixed, they can't deliver it. It doesn't  
15 say anything that if they have an order or should have had  
16 a tag affixed, we just spell it out pretty clear.

17 So, I mean, if you guys have other language that  
18 can be more clear than this, then we should get it soon,  
19 because we are trying to get this counsel. And then  
20 counsel, I think can change it. It probably won't get  
21 approved until May. All of our bills won't get approved  
22 until May, so we will have time to think about it. But we  
23 tried to be pretty straight up, very clear, clear  
24 language, so I think --

25 MS. CHABERSKI: I have a comment on the tag.

1 It's shared responsibility where you get into the muck, I  
2 think, who does what and who's responsible, but -- and I  
3 don't know how the tags -- how easy they are to get off.  
4 Let's say people are scrupulous, so the first one to  
5 deliver, they take the tag off, they deliver, you know,  
6 not knowing that, and now they're afraid because they  
7 delivered to someone because the physical tag wasn't  
8 there, but -- you know what I'm saying?

9 MR. MC NEELY: It's going to have to be a tag  
10 where you have to cut it off, and it won't be reused. I  
11 think that's what California does. We haven't developed a  
12 tag yet, so this is something we have to do.

13 MS. CHABERSKI: I'm just saying, the  
14 owner/operator, they snap it so they can get their  
15 delivery and put it back on. I hate to say that 'cuz it  
16 could happen, but, you know, it's a business and people  
17 want to operate. So, that was the only thing about who's  
18 responsible in the language, you say if you deliver to a  
19 tag. But if you are saying the owner/operator is  
20 ultimately responsible, there should be something where  
21 whether the tag falls off or not, they need to notify the  
22 deliverer that they can't accept a delivery, if you want  
23 the total responsibility, but that one -- that could be  
24 tricky if the tag isn't there or they're not honest about  
25 it, now the delivery person is on the hook.

1 MR. MC NEELY: Well, I don't know, Cathy, if  
2 someone's cutting tags off and putting them back on, if  
3 they're that dishonest, they are not going to be calling  
4 the deliverer and telling them don't deliver. When you  
5 write law, you have to assume people are going to follow  
6 law, because then it would be like 20 pages long.

7 MS. CHABERSKI: No. I understand that. I am  
8 just saying, if you are putting the total responsibility  
9 on one party, then it's very clear that they have to  
10 really take that responsibility, but if you give a little  
11 bit to somebody else, that could be the problem.

12 MR. MC NEELY: And what we're trying to do is  
13 really -- and we regulate owner/operators, that's what we  
14 do. This has been thrust upon us by the Energy Act to  
15 regulate, sort of regulate deliverers, and we have not  
16 done that at DEQ, and I really don't want to take on a  
17 whole new entity that we regulate, so we're trying to make  
18 it as simple as possible that the owner/operator really is  
19 responsible to keep the tag on, and deliverers are held  
20 harmless, if there is no tag on it, but talking about was  
21 the tag on, then off, I'm not sure how you really get  
22 around that.

23 MS. CHABERSKI: I don't know.

24 MR. BUNCH: My suggestion would be 49-1013-F,  
25 just put knowingly, perhaps, something along those lines,

1 because that way it will be clear, because I do know that  
2 things get removed and then everyone's pointing fingers.  
3 Well, the transportation individual removed it. No. The  
4 operator did. No, the technician that worked on it who  
5 thought it was fixed removed it. I fortunately see this  
6 all the time. So, it might make it more clear.

7 MR. MC NEELY: Okay.

8 CHAIRPERSON CLEMENT: Just to follow up, I mean,  
9 do you think there is enough substantive issues here that  
10 as a Policy Commission we should be preparing formal  
11 comments to the agency regarding this statutory language?  
12 And maybe you need another meeting to prepare that or  
13 decide that, but --

14 MR. BUNCH: I think in addition to that, would  
15 help DEQ in terms of getting legislative support to have  
16 the Policy Commission be formally bless, if you will, or  
17 say that we, yeah, support this draft language, would that  
18 politically help the cause, do you think?

19 MR. MC NEELY: Oh, I think absolutely.

20 MR. BUNCH: My answer would be yes.

21 CHAIRPERSON CLEMENT: So, perhaps maybe in  
22 January -- what's our timing here? A January -- between  
23 now and the next Policy Commission in January, and then  
24 January vote on either a letter of support or with these  
25 minor changes or these significant changes, does that give

1 us enough time frame? That would be like the end of  
2 January where we will have a letter from the Policy  
3 Commission?

4 MR. MC NEELY: We are going to have to get  
5 language. They've been asking us. I've been waiting,  
6 trying to get to December 12th so you guys can vote on  
7 this so I can actually give them the language saying this  
8 is the language. This is the language -- but if you feel  
9 -- it seems like we've really gone over quite a bit of  
10 this.

11 CHAIRPERSON CLEMENT: I know we have.

12 MR. MC NEELY: We've had four meetings, and I  
13 think we're down to one word. I'm not sure if there are  
14 any other words that you're talking about, but we will  
15 have to give this language tomorrow.

16 CHAIRPERSON CLEMENT: I know.

17 MR. MC NEELY: Then if you want to have other  
18 meetings, it certainly will help -- I'm going to have to  
19 testify. I mean, I can say, we've had stakeholder  
20 meetings and this is consensus language. It would be a  
21 lot easier, you know that, than saying, well, it's not a  
22 consensus, so I agree with that. I think it would be nice  
23 to have it.

24 MR. BUNCH: So the process will be, you are going  
25 to give them draft language, they are going to legalese it

1 or somebody who works for Mr. Barnes will tweak it, so it  
2 sounds like there may be some time for you folks to submit  
3 something?

4 CHAIRPERSON CLEMENT: No. It will go in as a  
5 bill, and that becomes more complicated.

6 MR. BUNCH: Wouldn't Barnes, though, change  
7 language around a little bit at some point, possibly?

8 MR. MC NEELY: Well, I mean, bills always get  
9 amended. So what would have to be a formal amendment, you  
10 have to find someone to formally revise, introduce it,  
11 which it happens all the time, but when you start doing  
12 that, then things get added onto it, too, because you  
13 never know who wants to kill it or do something else with  
14 the program, or, you never know, so it gets dangerous when  
15 you start amending bills.

16 CHAIRPERSON CLEMENT: Ms. Gaylord?

17 MS. GAYLORD: It looks like the proposed  
18 legislation is on the agenda, and it looks like all the  
19 items on the agenda are eligible for a vote. I've  
20 actually read the legislation. I support the suggested  
21 change, but I'm very comfortable with the legislation,  
22 other than that change, and I wonder if it's appropriate  
23 for us to consider voting on it today.

24 CHAIRPERSON CLEMENT: I would be very in favor of  
25 doing that, if Mr. Bunch feels that he's had enough

1 opportunity --

2 MR. BUNCH: Absolutely.

3 CHAIRPERSON CLEMENT: -- through the committee  
4 process to give us that recommendation, I think it's an  
5 excellent idea, if we're ready to do that.

6 MR. BUNCH: I mean, Phil's point, they've had  
7 several public meetings to discuss this, the language has  
8 been out there a long time. As I noted before, we weren't  
9 overwhelmed with participation the first go-round, so I  
10 think everything is pretty darn close. The issues  
11 expressed today, if that's something you would be willing  
12 to consider, I'm very comfortable voting today.

13 CHAIRPERSON CLEMENT: Okay.

14 MR. MC NEELY: I think in your proposal to vote,  
15 you should put that in there, you know. I'm not sure if  
16 the word would be knowingly or intentionally. Legally,  
17 I'd have to ask the attorneys what that means. We may  
18 have to approve it. I'm not sure how we do that. But I  
19 think we could just put that in there and then we can get  
20 our AG to look at what word to throw in there, because I  
21 agree with the intention.

22 CHAIRPERSON CLEMENT: And since we have counsel  
23 on the Commission, do you have a preference in terms of  
24 wording?

25 MS. GAYLORD: I believe that all we need to do is

1 direct counsel to put language in regarding intent, and  
2 they can pick what level of intent is appropriate, I  
3 think.

4 MR. MC NEELY: Okay.

5 CHAIRPERSON CLEMENT: Yes. Ms. Gaylord?

6 MS. GAYLORD: So, I move that the Policy  
7 Commission consider adoption of the proposed legislation  
8 with the addition of language of intent in --

9 MR. BUNCH: 4 0 -- 49-1013-F.

10 MS. GAYLORD: In that section.

11 CHAIRPERSON CLEMENT: Okay.

12 MR. BUNCH: I second.

13 CHAIRPERSON CLEMENT: Okay. Any discussion? Any  
14 additions?

15 MR. VYAS: I am in 100 percent support of the  
16 language. I just wanted to point out one small thing and  
17 that is nothing to do with changing the language, but I'm  
18 just sharing with the Commission, in 49-1013, Enforcement  
19 and penalties, any legislation that uses the word  
20 "reasonable time," reasonable time in the eyes of a  
21 directive, an ADEQ or an operator, or a deliverer, it's  
22 such a subjective term whereby they will lose the  
23 potential for people who have an agenda to not support  
24 such legislation to come out and point out inconsistent  
25 enforcement in application, subjective determination by

1 the Director, giving bill 19 months to comply, that's  
2 reasonable, but sorry, Gail, July 1 is your deadline,  
3 2008; so using the word "reasonable" in legislative  
4 languages I have used in the past, I'd try to avoid that  
5 word unless -- and the one suggested way always is,  
6 instead of saying reasonable, say something about the  
7 criteria that the Director would use, which could depend  
8 upon the complexity of the case, the number of tanks in a  
9 particular organization, but something of that nature,  
10 because the minute you say reasonable and not define what  
11 reasonable is, it can always raise questions.

12       And that is just a simple comment on my part. I  
13 mean, I read the whole thing, but when it gets to an  
14 appellate process, then the 30-day hearing, and I don't  
15 want Phil to be -- and Ron to suddenly get 95 appeals  
16 because they did not think that the determination was  
17 reasonable from their perspective. That's just a thought  
18 on my part.

19       MR. MC NEELY: Okay.

20       MR. VYAS: But I think the language enhancement  
21 of amendment, especially on the secondary containment, and  
22 I like the fact that you are giving people plenty of time  
23 on 2009. I also observed in my mind that the training  
24 class is a class B, class C personnel that you are talking  
25 about, that is also going to further enhance the success

1 of the mission. Because once -- and give them plenty of  
2 time, 2012. But once they have A, B and C designated, and  
3 they are trained and certified by the Department of your  
4 agency, I think there is going to be a lot more successful  
5 end result. That's my speculation on that. But it's an  
6 excellent draft, obviously, and I definitely support it  
7 100 percent.

8 CHAIRPERSON CLEMENT: Any other comments, or do  
9 we want to vote then on the first proposal that we just  
10 had and potentially you want to formulate a second one?

11 MR. VYAS: No, no, no. I'm just sharing that, if  
12 it comes up in the legislative process, maybe you can at  
13 that time.

14 MS. CHABERSKI: I have one question. After, if  
15 it's left that way, then wouldn't you have clarification  
16 once you get a rule or something from the legislation to  
17 address that so we wouldn't have to be specific in the  
18 bill?

19 MR. MC NEELY: Are you talking about the  
20 reasonable?

21 MS. CHABERSKI: Yes.

22 MR. MC NEELY: Yes. That reasonable language is  
23 already there.

24 CHAIRPERSON CLEMENT: Is existing language.

25 MR. VYAS: It's not an amendment. It's an

1 existing provision --

2 MS. CHABERSKI: Right.

3 Mr. VYAS: -- under the 205 Energy Act. What I'm

4 saying was that is the kind of mindset that would be

5 worked out, but we don't have to do anything right now

6 anyway.

7 CHAIRPERSON CLEMENT: Okay. Good. Okay. So we

8 have a proposal to support the legislation as drafted with

9 an addition to -- and I'm not going to site the citation,

10 but to put that the concept of intent, and I will draft a

11 letter, perhaps share it with Bill and Karen so that you

12 will be comfortable with the language I put in that

13 letter, so that proposal is on the table. We have a

14 second. So now we will have a vote.

15 All in favor of that?

16 (Chorus of ayes.)

17 CHAIRPERSON CLEMENT: Anyone opposed. No?

18 That passes, then.

19 What we will happen from this point is I will

20 draft a letter to the Director copying the legislature.

21 Usually it's the Governor's Office, and then the head of

22 the Senate and head of the House, and then Representative

23 Barnes, who I actually don't remember where he sits now

24 and all that, and then get that out to you two to review.

25 Do we want a language review of the full

1 Commission before that letter goes? I don't usually think  
2 that's necessary.

3 MR. MC NEELY: I will send you whatever we come  
4 up with. It will be just a couple of words, probably.

5 CHAIRPERSON CLEMENT: Then we will just put that  
6 together and get that out, probably this week would be my  
7 intent, before Christmas for sure.

8 Okay. Great. Thank you very much for your  
9 efforts, and Andrea Martincic's efforts also in pulling  
10 that together.

11 Anything else that you'd like to provide us  
12 comment on in terms of the Evaluation Subcommittee?

13 MR. BUNCH: That's all that was discussed. I  
14 think we had contemplated further agenda items, but at  
15 this point I'm not prepared to further any of those.

16 CHAIRPERSON CLEMENT: Is there a need in your  
17 opinion to hold the next Financial Subcommittee meeting in  
18 January or are there items that you'd like us to discuss  
19 for that meeting in any way?

20 MR. BUNCH: There are no topics that are urgent  
21 at this point that I believe need to be addressed unless  
22 some issues come from outside of the Commission.

23 CHAIRPERSON CLEMENT: Great. Okay. Thank you  
24 very much, Bill.

25 Then we will move on to, there was a Technical

1 Subcommittee meeting, and both Cathy and Theresa were in  
2 attendance. Theresa Kalaghan was not able to join us this  
3 morning, so Cathy was going to give us, as co-chair, the  
4 report out.

5 MS. CHABERSKI: Well, unfortunately, she couldn't  
6 make it today, so what I'm going to try to do is capture  
7 what we tried to net out from all the discussion at the  
8 meeting. And what I guess we learned, too, is our topic  
9 was remediation system operational performance measures,  
10 and the first lesson we learned was from the technical,  
11 other things stem, because it's tied into the technical.

12 Well, anyway, I'm going to go through five items  
13 which we netted out.

14 The first item was regarding the denial letters.  
15 And we were a small group that met, but the bottom line  
16 was folks were requesting if there could be some  
17 explanation when they get a SAF denial letter. And they  
18 were looking at something similar to the work plan  
19 process.

20 I don't know if you want me to go through the  
21 five, or whatever.

22 The second -- and as I said, our history, I just  
23 tried to bring forward what was said at the meeting.

24 CHAIRPERSON CLEMENT: Maybe we could just discuss  
25 them as they go, and if there is easy ones, we can just

1 take them off that way.

2 MS. CHABERSKI: I think some of that may be from  
3 the shutdown of the technical issues stemmed from these  
4 issues that were kind of netted out of the meeting. So it  
5 wasn't that we were just talking about SAF, and Joe  
6 Drosendahl was present, but I'm not sure that we had the  
7 answers on some of the SAF things.

8 CHAIRPERSON CLEMENT: And I also -- because we're  
9 in transition and both Theresa and Ms. Chaberski are new,  
10 we're trying to give them a little bit more support, so  
11 I've had discussions, even though I was unable to attend  
12 the subcommittee meeting, I've had discussions with Ms.  
13 Chaberski and Ms. Kalaghan, and so I'm going to try to  
14 fill in as best I can, even though I wasn't in attendance  
15 at that meeting.

16 And, as I understand it, this issue relates to  
17 when you have an OAH now and the kind of cost for  
18 remediation system and it's denied, but there is no code  
19 that will go out necessarily in the denial letters, and so  
20 people are not always aware of why they're being denied.  
21 And so it seems that in terms of the process, it sounds it  
22 may be wise, if it's not present now, to provide some  
23 explanation so people have an understanding of why they're  
24 being denied. I think that's the issue.

25 MR. MC NEELY: Okay.

1 CHAIRPERSON CLEMENT: And, first of all, is that  
2 correct? Do those denials not have an explanation  
3 associated with them?

4 MR. MC NEELY: The denial codes, they do have an  
5 explanation but they're not that detailed. They may say,  
6 do not meet the requirements of 1054-D, or something,  
7 which means it's not reasonable and necessary cost  
8 effective or didn't contribute to corrective action, so  
9 that could be a lot of things.

10 So that could be part of the problem. Then what  
11 we do is we usually have an informal meeting on an  
12 informal appeal meeting, and talk it it, hash it out,  
13 saying this is what we are talking about. So it  
14 eventually gets out there, but initially we don't write it  
15 all out, because sometimes it would be a lot of reasons  
16 you'd have to write out. So we can look into the detail.

17 CHAIRPERSON CLEMENT: I think -- I mean, to avoid  
18 the informal meeting requirement or, from what I  
19 understand, that is often a next step because people don't  
20 understand why they're being denied and may not have had  
21 an opportunity to provide all of the details and the  
22 understanding of what happened to the system, et cetera,  
23 et cetera.

24 So, if there is a way that through just the  
25 verbiage in your letters you could streamline that process

1 rather than having it be, you know, almost a necessity to  
2 have an informal meeting and appeal, that might be helpful  
3 to the agency.

4 MR. MC NEELY: Okay.

5 CHAIRPERSON CLEMENT: So you are going to -- as  
6 far as follow-up on this, you are going to get back  
7 with --

8 MR. MC NEELY: I will look at it. Even though I  
9 know we've been trying for the last couple of years,  
10 Ronnie Moore detailed denials, I think that's something  
11 you can always improve on.

12 CHAIRPERSON CLEMENT: And you'll get back on that  
13 to us?

14 MR. MC NEELY: Right.

15 MS. CHABERSKI: This is just a -- there was a  
16 question, a comment, and, Phil, maybe you can speak to  
17 this, but it has to do with standardized process for  
18 claims. And some folks were saying if there was a  
19 checklist that we could go through so that we understand  
20 when we make a claim, then there was another group of  
21 thought saying, well, then you lose the site specific  
22 information that -- you know, a checklist can be great or  
23 it can be negative, depending on site specific. I'm just  
24 bringing up that comment, because this must be imbedded in  
25 history and I felt this was one of the items that the

1 group had discussed, so --

2 MR. MC NEELY: In terms of our processing, we  
3 have all sorts of forms for the SAF. The SAF rules are  
4 very descriptive.

5 Are you referring to the checklist for when you  
6 mean shut down a system? Joe, you were there. I wasn't  
7 at the meeting, but you mean a checklist of when it's  
8 asymptotic?

9 MS. CHABERSKI: That was another issue that I'm  
10 going to get to.

11 MR. MC NEELY: For our SAF process, we have all  
12 sorts of forms and descriptive. I'm not sure we have --

13 MS. CHABERSKI: If I remember, it was a little  
14 bit kind of all over the place, so, before I finish the  
15 list, I'm going to suggest at the end that we do have the  
16 January 9th additional sub meeting to see if we want to  
17 verbalize this or make more recommendations on some of  
18 these issues that I'm bringing up today, so maybe at that  
19 meeting I will ensure that we bring that issue up to get  
20 some more clarification of what the group really meant.

21 MR. MC NEELY: Okay.

22 MS. CHABERSKI: So I'll table that.

23 Well, the issue that the group brought up was  
24 some folks talked about the performance measures, and then  
25 we talked about outages, outages in remote locations, and

1 then that kind of stemmed to the denial, because if you  
2 don't have remote monitoring, what kind of documentation  
3 do you need. It didn't seem clear. So that was a whole  
4 discussion about what needs to be provided under these  
5 circumstances related to power outages and if you don't  
6 have documentation.

7 Is there anything specific to that? Is there a  
8 tool out there that people can use that's been created or  
9 something?

10 MR. MC NEELY: That's just a narrative  
11 description of what the issue is. You can't just say, you  
12 know, we had thunderstorms in the area, that's why I had a  
13 30 percent run time and I want to get paid 100 percent.  
14 You could have that month after month after month. If you  
15 have a good run time up to like June or July and all of a  
16 sudden, boom, you have a bad run time for June, July and  
17 August, you can sort of document it, this is running but  
18 it went down.

19 I mean, we really work with people. We meet with  
20 them and say give us something, but just to submit a claim  
21 without any explanation, just by row, we will go through  
22 and go 38 percent times your rental rate, we'll pay you  
23 that. Then they come back and say, no, there was  
24 thunderstorms. You've got to tell us something. So,  
25 really, it's site by site. And like in Phoenix, you know,

1 it's a lot easier for someone to run out and turn on a  
2 system. Five-hour drive time, it's a lot harder, and it's  
3 not cost effective, necessarily, to drive up, turn it on  
4 and come back the next day.

5 So, we really do try to work with everybody on  
6 this. I've seen quite a few of these influent fields that  
7 we approve. We go, yeah, you know, it seems reasonable.  
8 The run time was good all the way up to that point.

9 MS. CHABERSKI: There was some discussion, if  
10 they don't have the documentation, and the electric  
11 company doesn't say officially there was an outage, and  
12 things like that; they are lacking the ability to get that  
13 information so --

14 MR. MC NEELY: I don't really have a good  
15 solution or explanation how to do it, really. You just  
16 have to be reasonable and the other side has to be  
17 reasonable and work together. It's really site specific.

18 CHAIRPERSON CLEMENT: One thing that I wanted to  
19 just add to, I live in the Phoenix metro area, but I live  
20 in an area that often has electrical disruptions, and so  
21 you could be in a situation where you wouldn't have a  
22 pattern of everything operating consistently. Depending  
23 on your geographic vicinity and the electrical supplies to  
24 it, you could be in a situation where you have continually  
25 have electrical disruptions and through no fault of your

1 own have a system that's on and off because of that.

2 So, I would just be cautious that you can't  
3 necessarily look at a pattern of 100 percent operation and  
4 then a thunderstorm in these remote areas.

5 MR. MC NEELY: Well, that would be if your  
6 argument was that monsoon came and the monsoon is the  
7 cause of it. You'd say, well, if it caused it, what  
8 happened in May and April. But if it's an electrical  
9 problem just because the generator plant has problems,  
10 that's a different explanation. It's all really site  
11 specific.

12 CHAIRPERSON CLEMENT: Just like our phones, I  
13 haven't had an operating phone for two weeks now, so I'm  
14 not paying two weeks of my bill. And I'm in Phoenix  
15 metro, so, you know, that's telemetry, that's -- your  
16 phone system is often what you have if you're using  
17 electronically remote telemetry, so I just caution you to  
18 be a little bit broad in terms of how you understand these  
19 systems can be managed.

20 Do you think there is a requirement or a need for  
21 additional discussion in the next Technical Subcommittee  
22 meeting?

23 MS. CHABERSKI: I will bring up, because right  
24 now some of the issues -- the group didn't have a  
25 recommendation or somewhere to go because it was unclear

1 as to how DEQ views it, and certainly I didn't have enough  
2 knowledge or historical knowledge. So on some of these  
3 issues, I think it would be appropriate on January 9 for  
4 me to mention them again, and if the group thought that  
5 there was a recommendation or something that can be done  
6 to tighten things up or educate people more, then I bring  
7 that back to the next policy meeting.

8 CHAIRPERSON CLEMENT: That makes a lot of sense.

9 MS. CHABERSKI: So, I'm not saying we are  
10 bringing up an issue and having a solution now. I don't  
11 think we got that far because we were waiting to see if  
12 there was an easy answer, or something in place, or some  
13 direction.

14 There was a general comment by the group on  
15 backup documentation for claims. There was a suggestion  
16 that, could there be a bulletin provided or reminder, or  
17 is that -- and I'm not sure what you have in place, which  
18 is why we're bringing that up -- to remind people so that  
19 when the claims come in, you know, they are efficient. It  
20 saves everybody time and energy and conflict, and I don't  
21 know if there was ever a bulletin or a guidance document  
22 on required backup documentation, but that was an issue  
23 that came up.

24 MR. MC NEELY: We've been requiring backup  
25 documentation forever, really. This may be the backup

1 documentation for the outages.

2 MS. CHABERSKI: Well, in addition to that, yes.

3 MR. MC NEELY: That's probably what they're  
4 asking. We wanted approval of this and how do we get  
5 documentation to prove it. There may not be any. That's  
6 why it gets a little complicated. You have to sit down  
7 and talk about it, but, you know, the informal appeal  
8 process is not a bad thing. The informal appeal, it was  
9 set in place back in '98 so you can sit down and talk  
10 about it. That's what it's there for. I want to meet  
11 with you guys, and we have to meet by statute.

12 So, it's part of the process. I don't know if  
13 you want to try to fix it up front where you know you have  
14 that in there, because it's really site specific and we  
15 can't start saying give us all this electrical outages of  
16 city, because that's crazy, you start doing that. There  
17 is no easy way, really.

18 I mean, in general, we do a lot of claims where  
19 we don't really have a whole lot of issues, but there are  
20 a few that, you know, pop up and you have issues, and  
21 that's why you have to sit down and talk about them. I  
22 think to put something in place to fix it is really not  
23 possible.

24 MS. CHABERSKI: Okay. Well, as I said, I will  
25 bring this back and we are trying to get some specific

1 samples, but we will try a bit harder to see if that's  
2 necessary, so I will bring that up again to try to get  
3 more specific for you.

4 MR. MC NEELY: All right.

5 MS. CHABERSKI: And then the last was the "when  
6 you are done" question. As far as running your system,  
7 you run it -- the example was, you run three extra months  
8 because you need to, and DEQ says you were done really  
9 three months ago, that there is some subjectivity in  
10 there, and that there was some question as to giving  
11 direction so that everybody kind of knows when you're  
12 done.

13 MR. MC NEELY: Right.

14 MS. CHABERSKI: So -- and we can -- I don't know  
15 if you can speak to any of that, or the subjectivity, and  
16 I can certainly mention it again at the next meeting.

17 MR. MC NEELY: Maybe we should have a public  
18 meeting just to talk about that. That seems like that's  
19 an issue, not with everybody, but with some people, really  
20 what's asymptotic, what's not asymptotic. We look at it  
21 really chemically when we're cleaning up, if benzene is  
22 your driver, you look at benzene. If your benzene is gone  
23 and no longer any influence, it should be going very  
24 quickly, doing confirmation boring very quickly to see if  
25 you can shut it down.

1       We've had issues where you're running. I'm still  
2 pulling TPA shot, pulling TPA challenge. Benzene's a  
3 driver. We are not trying to clean this up to pristine.  
4 We're trying to clean it up to a cleanup level, so I think  
5 maybe we should have a meeting on this to talk about that.  
6 Other people will run it because they're saying, you know,  
7 my groundwater is contaminated so I'm going to keep it.

8       So, I think maybe we should just have -- Joe  
9 should probably host a meeting in January, February just  
10 to talk about what is asymptotic, what are the cleanup  
11 goals. Maybe we can do that when we talk about our MNA  
12 Rule, just have it all then. When would you shut down and  
13 move forward to MNA or move forward to groundwater  
14 closure. That maybe would be a good time to do it.  
15 Because really that's the issue is when is enough is  
16 enough. It's really everybody's own experience when  
17 enough is enough, but unfortunately we're the ones that  
18 are writing the paycheck out, we have that responsibility  
19 to make sure that we're being reasonable and necessary,  
20 and that's where you have conflict.

21       But in general, I don't think there is a whole  
22 lot of conflict, because a lot of them go through without  
23 telling us. But there is some issues that we see. There  
24 is a difference of opinion.

25       MS. CHABERSKI: That might help with the new

1 rule, too, to get some clarity on the overall picture.

2 There might be benefits.

3 CHAIRPERSON CLEMENT: That would be good timing,  
4 I think. Would you have that -- can you commit to a time  
5 frame for sure in this meeting?

6 MR. MC NEELY: We're planning on February for the  
7 MNA Rule. The rule goes into effect February 2nd. It  
8 would be nice to actually do it before February, but I  
9 don't know if we can get ready in time for that.

10 CHAIRPERSON CLEMENT: So February 2008, and then  
11 in your January meeting, if there are any other explicit  
12 things that come up, you could feed those back to DEQ and  
13 make sure they were covered in the February presentation.  
14 That might be good timing.

15 MR. MC NEELY: Okay.

16 CHAIRPERSON CLEMENT: All right.

17 MS. CHABERSKI: So that is what I believe we  
18 netted out in our discussion. I encourage folks to send  
19 Theresa or I agenda items, or if you have an update on  
20 what I just went over for clarification, and to attend the  
21 meetings so we can try to figure out exactly what we need  
22 to present on your behalf, and that will be January 9th is  
23 my understanding.

24 CHAIRPERSON CLEMENT: Does that meeting start at  
25 nine on January 9th? I think it's usually a morning

1 meeting.

2 MS. CHABERSKI: Well, that was -- yeah, 9 o'clock  
3 on January 9th.

4 CHAIRPERSON CLEMENT: Okay.

5 MS. CHABERSKI: And it says in Room 4001-B. That  
6 hasn't changed.

7 So my question is, Cynthia is leaving. We're the  
8 first up on the next agenda. Is someone going to send us,  
9 however that worked last time, a heads up, what are your  
10 agenda items?

11 Cynthia, we're missing you already for this next  
12 meeting.

13 CHAIRPERSON CLEMENT: Our babysitter is going to  
14 be gone.

15 MR. MC NEELY: I will have my administrative  
16 assistant, her name is June Schellenberg.

17 MS. CHABERSKI: She will contact us and you guys  
18 will do the same process?

19 MR. MC NEELY: Yeah. I will have her send an  
20 e-mail out to everybody tomorrow, and you will know her,  
21 and she will just do that portion of it for the time being  
22 until we figure out what we can do without Cynthia.

23 MS. CHABERSKI: Thank you.

24 CHAIRPERSON CLEMENT: Thank you.

25 MS. CHABERSKI: That's it for me.

1 CHAIRPERSON CLEMENT: Thank you very much.

2 Any other questions or comments regarding the  
3 Technical Subcommittee meeting?

4 Okay. Let's move on then. We will move now to a  
5 general call to our public. Now we have two publics in  
6 the room. Do either of the publics have anything to  
7 comment? Never did a public have so much attention.

8 Okay. Summary of meeting action items.

9 The first one is I'm going to draft a letter to  
10 the respective powers that be regarding our support of the  
11 proposed UST legislation with one minor addition. That  
12 language will be sent to Mr. Bunch and Ms. Gaylord for  
13 review, then it will be, after their review, sent out as a  
14 final document to all of the parties.

15 The second is, we will hold a UST Technical  
16 Subcommittee meeting on January 9th to discuss and further  
17 clarify the five items that were identified during the  
18 presentation this morning, and also DEQ will be prepared  
19 to respond to the potential, to provide additional detail  
20 in SAF denial letters, and the other addenda items.

21 The third is ADEQ is going to hold a meeting in  
22 February 2008 to discuss the new corrective action rule,  
23 how it's going to be implemented, and then also as a  
24 component of that, when is clean clean, and when can  
25 remediation systems be terminated, under what conditions

1 would the agency be looking for.

2 Fourth, I think this is. Mr. McNeely's  
3 administrative assistant, June, will contact you and she  
4 will coordinate until another poor soul is assigned to the  
5 Commission in lieu of Ms. Miller.

6 So, I think that's it. Those are our agenda  
7 items.

8 And then finally I do definitely, as a final  
9 agenda item, I will send a formal letter from the UST  
10 Policy Commission to Ms. Miller and her management chain  
11 thanking her for all of her efforts, certainly while I've  
12 been participating, and wishing you every success as you  
13 move into your next career.

14 Cynthia will be putting together a business model  
15 for new start-up businesses. That's what she's going to  
16 be doing her consulting on, so hopefully in the future you  
17 will be able to pass out a new business card at one of our  
18 next Policy Commission meetings, and we wish you every  
19 success.

20 MS. MILLER: Thank you.

21 (Applause.)

22 CHAIRPERSON CLEMENT: Okay. I think -- oh, next  
23 agenda item is schedule for the next Commission meeting.  
24 I think we do need -- do we need a January meeting? Do we  
25 not need a January meeting?

1 MS. CHABERSKI: We are doing one January 9th, and

2 I don't know if anything --

3 CHAIRPERSON CLEMENT: Other than that --

4 MS. CHABERSKI: That's up to you.

5 CHAIRPERSON CLEMENT: Should we potentially have

6 a January meeting, see how the Technical Subcommittee

7 goes? If there is nothing rising to the top, we will have

8 a February meeting instead. Is that a good idea? I mean,

9 there is no reason for us to have meetings if we don't

10 need them. There is just no reason to sit here unless we

11 need it. So, we will tentatively have a January meeting,

12 more probably a February meeting, unless something arises

13 from the Technical Subcommittee that we need to address

14 before February.

15 Agenda items. Any agenda items that come up,

16 just pass them on to me and I will make sure they're

17 included, and I think that's it.

18 Anything else anyone had that we needed to

19 discuss? Okay.

20 MR. BUNCH: One quick question, I guess, to Phil.

21 Knowing that hopefully the legislation will become a bill,

22 and we've got some milestones coming on the near horizon,

23 and forgive me if you've answered this question already,

24 but is the agency contemplating rule development to update

25 Title 18 and, if so, when would that process begin? Would

1 you put the cart before the horse like we did in the draft  
2 legislation and assume that the basic fundamental terms  
3 will apply and develop rules sort of around what we expect  
4 it to look like, or what are your thoughts there?

5 MR. MC NEELY: I'm not sure how much farther to  
6 implement this Energy Act. I think, we do want to do  
7 rules because Ron's performance, UST compliance, there is  
8 issues that we've got to change in there, you know, some  
9 of the references have been outdated and stuff. So, we  
10 should outdate the rules anyway. That's where it would  
11 be, probably put in there.

12 I think the Energy Act, I don't think -- what we  
13 are putting in this legislation pretty much complies with  
14 most of the Energy Act's requirements. I think the only  
15 thing that may be to rule on is what are we really going  
16 to do with the training exactly, but before we do that,  
17 we've got to figure out what that's going to be. You  
18 know, we have a year or two years -- I guess a year from  
19 August when that's supposed to be actually set in place,  
20 but I'm not sure. Then it really doesn't go into effect  
21 until 2012, so we have to time to figure out what that  
22 training is going to be.

23 So I think we don't really want to develop the  
24 training in a rule process. We probably want to figure  
25 out what we want to do in training, figure all that out,

1 and then maybe put what we need into the rule after we  
2 figure it out.

3 So, the answer to your question is, we do want to  
4 do rules, but it may not be real soon, and it probably  
5 won't be, here are the rules, it's done, it will be more  
6 figuring out what we need to do, figure out what needs to  
7 go in a rule and what doesn't need to go in a rule.

8 So, personally, I'd rather not have it in a rule  
9 if I can help it, but maybe we need it in rules.

10 MR. BUNCH: It is just handy if all the  
11 requirements are in a rule so that operators and  
12 consultants aren't going, here's Title 18, but wait a  
13 minute, that doesn't include all the stuff that was  
14 addressed in this new bill. It just makes it more  
15 cumbersome for the regulated community.

16 MR. MC NEELY: What the issue is, we don't want  
17 to develop a training program ourselves. We were hoping  
18 that one of the other 50 states would develop it or EPA or  
19 some of these state organizations would develop something  
20 like that so that we can just grab onto it and say, yeah,  
21 this looks good, and modify it for our statute. So, we  
22 want to do that first before we try to open up a rule,  
23 because we want to see what it is and make sure the rule  
24 reflects what the training that's been developed. It will  
25 be a lot easier on us.

1 CHAIRPERSON CLEMENT: And that may actually be  
2 something the Evaluation Committee in the future would be  
3 interested in compiling what training is out there, that  
4 kind of thing, so to give you some consistent answer.

5 MR. MC NEELY: Okay.

6 CHAIRPERSON CLEMENT: Okay.

7 MR. BUNCH: Thank you.

8 CHAIRPERSON CLEMENT: Okay. I think on that  
9 note, we are going to end the December 12th, 2007 UST  
10 Policy Commission meeting. Thank you all for attending.  
11 Everyone I hope has a wonderful holiday and enjoy your  
12 free time with your families. That's what matters.  
13 Thanks.

14 (10:28 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 69 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 12th day of December, 2007.

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Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477