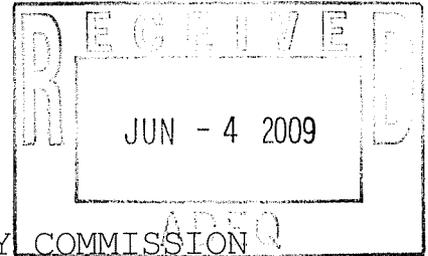


ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
April 22, 2009  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

REPORTED BY:  
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COMMITTEE MEMBERS PRESENT:

- Gail Clement, Chairperson
- Catherine Chaberski
- Theresa Kalaghan
- Karen Gaylord, Esq.
- Michael Fulton
- Tamara Huddleston, Esq.
- Joseph Mikitish, Esq.
- Manoj Vyas

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

2  
3 CHAIRPERSON CLEMENT: Good morning, everybody.  
4 Welcome to the April 22nd, 2009 Underground Storage Tank  
09:02 5 Policy Commission meeting, and that smoke alarm is going  
6 to be not repaired, the battery will be removed and  
7 replaced while we're here today, so please don't let that  
8 bother you too much.

9 And also want to wish everybody, April 22nd is  
09:02 10 Earth Day and a happy Earth Day, and I hope everybody is  
11 encouraging the preservation of the earth today. And so,  
12 we're glad you're here.

13 Okay. Let's get started. We'll start with the  
14 roll call, and if Manoj would start off on that.

15 MR. VYAS: Manoj Vyas.

16 MR. MIKITISH: Joe Mikitish with the Attorney  
17 General's Office.

18 MS. KALAGHAN: Theresa Kalaghan.

19 MR. FULTON: Mike Fulton.

09:03 20 CHAIRPERSON CLEMENT: Gail Clement.

21 MS. CHABERSKI: Cathy Chaberski.

22 MS. GAYLORD: Karen Gaylord.

23 CHAIRPERSON CLEMENT: We have everybody. The  
24 only one who said they would be here today that is not  
09:03 25 present is Bill Bunch. When he arrives or if he arrives

1 we'll make sure he's on the list of those that are in  
2 attendance.

3 Next agenda item is the approval of the  
4 January 28 and February 25th, 2009 meeting minutes. Has  
09:03 5 everybody received both sets of meeting minutes?

6 Have you had a chance to review them?

7 Any changes, comments?

8 MS. CHABERSKI: I think we just had that one  
9 change from January, which I believe was corrected.

09:03 10 CHAIRPERSON CLEMENT: Yes, we made that  
11 correction, and they were revised and then re-sent out, so  
12 let's take them in order.

13 And do I have a motion to approve the January  
14 28th, 2009 meeting minutes?

09:03 15 MS. CHABERSKI: Motion to approve the  
16 January 28th meeting minutes.

17 CHAIRPERSON CLEMENT: 28th. Thank you. Is there  
18 a second?

19 MR. VYAS: Second.

09:04 20 CHAIRPERSON CLEMENT: All in favor?

21 (Chorus of ayes.)

22 CHAIRPERSON CLEMENT: Anyone opposed?

23 No. Okay.

24 The January 28th, 2009 meeting minutes have been  
09:04 25 an approved.

1 Do I have a motion to approve February 25th, 2009  
2 meeting minutes?

3 MR. VYAS: So moved.

4 CHAIRPERSON CLEMENT: Is there a second?

09:04 5 MS. GAYLORD: Second.

6 CHAIRPERSON CLEMENT: All in favor?

7 (Chorus of ayes.)

8 CHAIRPERSON CLEMENT: Anyone opposed? No. The  
9 February 25th, 2009 Policy Commission meeting minutes have  
09:04 10 been approved.

11 Okay. We're going to move on to Mr. Mike Fulton,  
12 the Tank Division Director, for the ADEQ updates, and in  
13 particular we've asked for a couple of things added to the  
14 typical list. The status of LUST closures. As we get  
09:04 15 closer to the phaseout of the State Assurance Fund, we're  
16 particularly interested in what's happening with case  
17 closures, and then also as we may be transitioning into  
18 the Monitored Natural Attenuation Fund and monitored  
19 natural attenuation and some of the groundwater cleanups,  
09:05 20 we've asked for a little bit more of an understanding  
21 regarding the DEQ criteria for the LUST site case closures  
22 with groundwater contamination.

23 MR. FULTON: Okay. Under heading three, ADEQ  
24 updates, there are a couple of things that didn't make it  
09:05 25 on the agenda I do want to mention, then I will get into

1 the rest.

2 First of all, I have provided for the Commission,  
3 and I think we had a handout as well, we are required to  
4 do an annual update of the corrective action cost schedule  
09:05 5 of the State Assurance Fund. We've drafted that. It's on  
6 the table. It's a nice fat update here.

7 Really, to summarize, it reflects a 4 percent  
8 upward adjustment of allowable corrective action costs for  
9 reimbursement. If you are interested in the statute,  
09:06 10 that's covered in 49-1054, and again, it's just -- we're  
11 just doing an annual update as per the statute references,  
12 and it's a 4 percent upward adjustment.

13 I'm presenting that to the Commission, and I will  
14 assume it will appear on a future agenda for your review  
09:06 15 and approval.

16 CHAIRPERSON CLEMENT: Quick question. Anything  
17 besides the 4 percent revision, any new items in here, any  
18 changes?

19 MR. FULTON: No. That's what I've been told, so  
09:06 20 I've asked -- we haven't added any new items, so just  
21 because some item doesn't appear on the cost schedule, it  
22 does not necessarily mean it's not reversible by the  
23 Assurance Fund. This just lays out in advance for someone  
24 to be able to look and see what costs would be, without  
09:07 25 question, reimbursement.

1 CHAIRPERSON CLEMENT: Okay.

2 MR. FULTON: Second item is really not on the  
3 agenda is stimulus, federal stimulus dollars. Ron Kern  
4 has been badgering Region 9 incessantly to find out when  
09:07 5 we're going to get our money.

6 You've seen probably in press releases, there's  
7 been dribs and drabs of federal stimulus money and  
8 different programs come to both DEQ and ADOT and other  
9 agencies. We're still waiting for the LUST trust share,  
09:07 10 which we've now been told will be approximately \$3.219  
11 million to Arizona.

12 I will also point out that the Recovery Act had a  
13 huge number of requirements for transparency, so there is  
14 lots and lots of reporting going on. We set up a website,  
09:08 15 a link on our own web page, DEQ, that covers not just  
16 LUST, but also other monies coming to DEQ, so that's on  
17 our website on the front page. You can find that.

18 With particular respect to the LUST portion of  
19 that money, if you hit that link, you can see what sites  
09:08 20 it is we've at least proposed to begin work on when the  
21 money shows up. Those again, just to review, are largely  
22 orphan sites that were in the State Lead Program, that are  
23 in the State Lead program, so those list the criteria for  
24 LUST trust monies and stimulus are very similar to what  
09:08 25 they are under the federal grant. So we're looking at

1 taking care of some of these orphan sites using stimulus  
2 money.

3           That list shows something at approximately the  
4 amount of money we're going to get, but obviously we don't  
09:09 5 know as we work through these sites how much money might  
6 be expended for these sites, so I think sites can come and  
7 go -- sites can come and go from that list as we work our  
8 way down through spending that money.

9           So we hope to have the award of the money almost  
09:09 10 any time. I don't know if you've heard anything new  
11 today, Ron. So they're working real hard through  
12 Underground Storage Tanks to get that in place and we've  
13 been working real hard to make sure we get that money out  
14 the door as soon as possible.

09:09 15           And one other point of clarification, we're not  
16 spending any of that money on staff. It's all going right  
17 out to site work.

18           CHAIRPERSON CLEMENT: So, that's basically  
19 contractor dollars, then?

09:09 20           MR. FULTON: Right.

21           CHAIRPERSON CLEMENT: Is there any matching  
22 dollar requirement on that?

23           MR. FULTON: No match requirements.

24           CHAIRPERSON CLEMENT: That's good. That  
09:10 25 certainly helps your budget.

1 MR. FULTON: Right. We could certainly take some  
2 of that money for staff, but I don't think that's really  
3 where we want to go right now. In terms of accounting, it  
4 becomes very complicated. We separate the staff time from  
09:10 5 the site work. It's just an easier thing to do. We  
6 already have the staff on board for the State Lead  
7 Program, so that's where we're going to use it to spend  
8 that money.

9 CHAIRPERSON CLEMENT: Any further comments or  
09:10 10 questions on that?

11 MR. VYAS: Mike, from your grasp of all the  
12 conditions, was there any that stood out as almost  
13 impossible to meet? I've been following the ADOT  
14 dialogue, and a large chunk of money was assured, and at  
09:10 15 the statewide level we found out that the conditions,  
16 quote-unquote, and the 15 percent of the expenditures  
17 would be done within 120 days, et cetera, et cetera, with  
18 such that, at the end of the day, the State Board of  
19 Transportation ended up with only doing maintenance  
09:11 20 projects, because most of those dollar conditions could  
21 not be met, so I was just curious, with the LUST trust  
22 fund, have you come across, has Ron come across any  
23 conditions that were virtually impossible to meet at a  
24 glance?

09:11 25 MR. FULTON: No. The requirement for the LUST

1 trust part of the money is that we have encumbered  
2 60 percent of the money and expended 30 percent of the  
3 money within a year. Is that right? Since most of these  
4 projects were already in State Lead, we've already got  
09:11 5 task assignments that might need some modification. We're  
6 already pretty well on the pipeline. It's not a problem,  
7 really.

8 The reporting requirements are what we're still  
9 trying to get our hands on, and that's not going to be  
09:12 10 hard to do. It's what we're hoping for is the reporting  
11 for the different levels of websites from the White House  
12 to O&B to EPA to DEQ to the Governor's Office, all have  
13 their own websites, are going to have their own websites  
14 for tracking the money, hoping to find a unified report.  
09:12 15 The LUST trust is pretty simple and straight forward.  
16 Other programs have a lot harder time. We're not going to  
17 have any trouble meeting that.

18 MR. VYAS: Very happy to hear that.

19 CHAIRPERSON CLEMENT: Congratulations.

09:12 20 MS. KALAGHAN: Are we seeing how long it takes to  
21 get the funds back out once the monies are received?

22 MR. FULTON: Well, weeks, a week.

23 MS. KALAGHAN: Potentially before 2010?

24 MR. FULTON: We plan on just implementing this,  
09:12 25 as we've already got contractors on board for the State

1 Lead Program. We're allowed to, and I think in the  
2 interest of just this time constraint we talked about,  
3 Manoj, we don't have time necessarily to write a new  
4 contract to implement. We are going to use our state UST  
09:13 5 contract. We're planning on just picking up those State  
6 Lead projects where they left off, basically state money  
7 stops, federal money starts and away we go, with some  
8 exceptions, I'm sure.

9 We need to look at the requirements of the ARRA  
09:13 10 and see if we need to change task assignments some for  
11 each of these contractors to make it real clear on the  
12 requirements. But we're still working our way through  
13 that, getting some guidance from EPA and UST folks. So,  
14 it should be fairly quick. That's our intent.

09:13 15 MR. VYAS: Thank you.

16 MR. FULTON: Anything else? The one other thing  
17 I did want to mention, I don't know what time you want to  
18 talk about this, Gail, I was just going to mention the  
19 technical business plan. As the new Governor has been  
09:14 20 cycling in, not because of that, the new Governor cycled  
21 in, we're looking at boards of commission appointments,  
22 two of the groups that serve this division as the Policy  
23 Commission here, and also the Technical Appeals Panel, and  
24 I've been trying to find out from those folks that sit on  
09:14 25 the Technical Appeals Panel currently whether they're

1 interested in being reappointed or looking at others that  
2 might want to join. So, if you happen to be interested in  
3 the Technical Appeals Panel, let me know, and I will guide  
4 you through what needs to be done in terms of an  
09:14 5 application and resume. And we propose those names up  
6 through our Director and they're considered by the  
7 Governor's Office. We are looking to have those  
8 reappointments done as soon as we can for the Appeals  
9 Panel. And, I don't know, you want to talk about the  
09:15 10 Policy Commission right now, but also their terms are  
11 expiring and we have a vacancy on the Policy Commission  
12 here.

13 CHAIRPERSON CLEMENT: I'd like -- that's a good  
14 opportunity to mention that. We have both the  
09:15 15 environmental organization and the environmental attorney  
16 positions expiring in May. Both Ms. Gaylord have  
17 indicated an interested in continuing to participate in  
18 that. I'm very grateful for that. Other names certainly  
19 could be circuited through Mike.

09:15 20 The big and most important outstanding vacancy is  
21 our vacancy that was filled originally by Mike O'Hara from  
22 the time the Commission was started, and that's a  
23 financial vacancy, accounting, insurance requirements,  
24 that type of thing. So, if you or anyone you know would  
09:16 25 be interested in that appointment, please contact me or

1 Mike Fulton, that would be very, very helpful to have that  
2 vacancy filled, and we just haven't come up with a name or  
3 an interest for that yet. So, thanks.

4 MR. FULTON: Okay. Status of LUST closures.

09:16 5 Provided in a handout, this is our colored chart again,  
6 since last report, I asked Joe to give us a bit of trend  
7 look here so we don't just look at the last month, so  
8 we're showing the last four months to put on the table,  
9 for want of a better criteria, but you can see how on the  
09:16 10 top is the LUST statistics showing the numbers of new  
11 LUSTs reported, and also those that have been closed.

12 So our trend is -- well, I don't know if there is  
13 a trend, but we're not seeing a big spike in new reports  
14 by any means, and we're also tracking those new reported  
09:17 15 releases pretty closely to see how that trend goes with  
16 time. See the cumulative numbers? Still with this many  
17 cumulative, it's hard to change that percentage very  
18 quickly, cumulative closed and open.

19 I think one of the -- the pie chart is pretty  
09:17 20 telling for what is left in the program. There is a small  
21 percentage of potential closure sites. The biggest  
22 percentage is groundwater impact. Those are the sites  
23 that are going to be the most expensive and time-consuming  
24 to close. So as the program matures, heads off into  
09:18 25 sunset, in terms of State Assurance Fund, not Corrective

1 Action, but we're just seeing more and more of the hard to  
2 close sites become a bigger percentage of the total open.

3           Theoretically, if we're doing a great job with  
4 prevention and new technologies to prevent releases or  
09:18 5 keep releases small, we shouldn't see a whole lot of  
6 groundwater LUSTs materialize. We should catch them when  
7 they're small, soil-only sites, essentially get them  
8 cleaned up pretty quickly, that's the hope.

9           CHAIRPERSON CLEMENT: Just as I'm looking at  
09:18 10 this, a question that I had was 24 percent are  
11 uncharacterized. Does that mean that they're in the  
12 process of characterization? That actually seems like a  
13 fairly large number.

14           MR. FULTON: Joe.

09:18 15           MR. DROSENDAHL: Some of that is that some of  
16 the sites are still not characterized. I believe that a  
17 good portion of that amount is just due to our database  
18 not being totally up-to-date with the current status of  
19 those.

09:19 20           CHAIRPERSON CLEMENT: Okay.

21           MR. DROSENDAHL: We're continuing to work through  
22 our sites and updating our database as much as we can, so  
23 I think that some of that is due, but some of those still  
24 aren't characterized.

09:19 25           MR. FULTON: Corrective action documents, pretty

1 finite number here, but it's important for us to move  
2 these along as quickly as we can because of the Assurance  
3 Fund's expiration we're facing.

09:19 4 So, yes, the program's been in existence for 20  
5 some years, but if it wasn't for the last minute some  
6 things wouldn't happen. So, all compression on this  
7 schedule belong to us, so we have to work on getting these  
8 things turned around as quickly as we can. But we are  
9 sensitive to moving things along, but we are also not  
09:19 10 putting square pegs in round holes where they can't belong  
11 just because we want them to move on to approval. We have  
12 to keep an eye on the target, which is groundwater  
13 cleanups and soil cleanups done in a cost effective and  
14 reasonable way.

09:20 15 I'll tell you one thing, one way we look at it,  
16 the way I'm looking at it is, the sites that remain are,  
17 as the Assurance Fund expires, there stands a good chance  
18 of those sites coming to DEQ management, either be  
19 orphaned, or financial hardship, as the Fund goes away, a  
09:20 20 case for financial hardship can be made more easily. And  
21 so we look at these things pretty critically, not to try  
22 to keep from paying anything, but these sites could be  
23 inherited by the Department, so we need to look at what's  
24 done on them and improve what's reasonable.

09:20 25 So, I know that there's some that wish that we

1 would have reviewed things a lot quicker, but we're trying  
2 to do what we can with the constraints that we have.

09:21 3 CHAIRPERSON CLEMENT: I know that there's been a  
4 hiring freeze a couple of months ago. Are you shorthanded  
5 in terms of the corrective action group?

6 MR. FULTON: I don't think we are terribly  
7 shorthanded. Everybody has got plenty to do, but we have  
8 cases assigned to every -- every case is assigned to a  
9 case manager, so -- and that's not an overly burdensome  
09:21 10 load. Just some cases are more complicated than others  
11 when comparing one to another. I think each case manager  
12 has about -- is it 40, Joe?

13 MR. DROSENDAHL: 40 to 50.

14 MR. FULTON: -- 40 to 50 cases, some of which are  
09:21 15 various stages of activity from nothing to a lot.

16 So, right now we're in the process, and I guess I  
17 can interject at this point, because the Fund is going  
18 away, we're going to be preparing to send out yet another  
19 reminder letter to the owners, operators, volunteers,  
09:22 20 consultants, reminding them again that the Fund's  
21 different deadline dates are upcoming, first of which is  
22 June '09, very soon, which is the cut-off date for  
23 preapproval applications, and, of course, the 2010 date  
24 for the Fund itself.

09:22 25 Just in the abundance of wanting to notify, we

1 just have to keep it up. So, the case managers are  
2 reviewing all their lists going to those people,  
3 personally contacting each one.

09:22 4 CHAIRPERSON CLEMENT: Okay. Your communication  
5 is much better at this stage of the game.

6 MR. FULTON: Right. MTCP, you know, since we did  
7 suspend our State Lead work given our budget challenges,  
8 there is nothing new to report on those. Some of these  
9 MTCP sites, some school system initiative sites, even some  
09:23 10 Route 66 sites might be in the stimulus pie. This might  
11 be some of the sites that we're looking at.

12 So take a look at that list and you will  
13 understand what we're working on, or what we're proposing  
14 to work on. So, hopefully that stimulus money can be used  
09:23 15 to get these efforts going forward a little bit more. We  
16 will talk about the budget here in a bit.

17 Second page, you know, we're still seeing -- I  
18 wouldn't say we're seeing a spike in claims, certainly in  
19 March we have more than we've had any other month this  
09:23 20 year, but it's not -- it's not way out of the range of  
21 what we would expect.

22 I wouldn't expect, but I don't know and this  
23 would be a good step for me to ask Tara, I don't know if  
24 our size of claims are going up. We're seeing more  
09:24 25 frequent submittals, which might be indicative of -- if

1 folks are worried about claims prioritization at all, they  
2 might want to submit claims more often, make sure they're  
3 in the cue. We haven't really seen that.

09:24 4 And there are some other statutes behind there  
5 that you are used to seeing. They are getting things done  
6 in under 90 days, payments out. So, 116 total for March.

7 And then the appeal machine continues to churn.  
8 There is a certain percentage of these claims that end up  
9 in appeals. We usually try to work them out informally if  
09:25 10 we can. Very few may get to formal.

11 CHAIRPERSON CLEMENT: When was the last time you  
12 had a TAP hearing?

13 MR. FULTON: I'm hearing through the campfire  
14 stories, a couple of years ago. Has it been longer than  
09:25 15 two, Joe?

16 MR. DROSENDAHL: I don't think so.

17 MR. FULTON: All right.

18 MR. MIKITISH: I think the last one was in  
19 February of '08, so it's about a year ago.

09:25 20 MR. FULTON: But the panel actually convened?

21 MR. MIKITISH: It was.

22 MR. FULTON: Did it get called off at the last  
23 minute?

24 MR. MIKITISH: It was convened.

09:25 25 MR. FULTON: So it doesn't meet very often.

1 CHAIRPERSON CLEMENT: So if you are interested in  
2 getting a TAP position, you have a great resume builder  
3 and you don't have much work, so...

4 MR. FULTON: Okay. There is something for  
09:25 5 everyone.

6 Okay. Any questions about the case closure?

7 CHAIRPERSON CLEMENT: No.

8 MR. FULTON: Okay. You've asked me to take --  
9 just do a brief presentation on the criteria to close LUST  
09:26 10 sites and groundwater contamination. And we will decode  
11 that to indicate what sites are eligible for MNA program  
12 or what can be closed under what we call the Rule 263.04.

13 Just real briefly, I will reference one of these  
14 handouts here that Joe put together, "Corrective Action  
09:26 15 Section - LUST Case Closures." This is an English  
16 language rewording of the rule -- not rewording, but just  
17 a listing. We can close sites under a couple of different  
18 means. One is a 263.03. That's mean a closure that's  
19 been in the rules for sometime. It talks about meeting  
09:27 20 predetermined standards for or through a DEUR, achieving  
21 closure if it's applicable.

22 263.04 is a relatively new portion of the rule  
23 that was adopted in --

24 Joe, help me here. What year was that?

09:27 25 MR. DROSENDAHL: February of 2008.

1 MR. FULTON: February of 2008. And that was  
2 adopted in part as part of 1306, when implementing Senate  
3 Bill 1306, which included a component for monitored  
4 natural attenuation closures.

09:27 5 Typical rules writing public process, so it went  
6 through public comment, and I think even the Commission  
7 here got a chance to look at that rule and make comments.

8 But for site closures where groundwater wells  
9 still exceeds the Aquifer Quality Standards. Let's look  
09:28 10 at that second set in bold. The site is characterized.  
11 That means the nature of extended contamination is known.  
12 The source of contamination at the time of the request of  
13 closure is either removed or controlled. Means there  
14 could be some, either done excavation or some type of  
09:28 15 successful remediation, or there is remediation underway.

16 Of course, the soil could meet the predetermined  
17 standards, under rule three. This is the residential or  
18 nonresidential standard depending on what the use of the  
19 property is. This is the -- part is subjective part of  
09:28 20 the program is the plume is either stable or shrinking,  
21 and I will talk about what we look for to assess that.

22 And contamination is attenuating at a reasonable  
23 rate. Now, that's another subjective term, what's  
24 reasonable.

09:28 25 In terms of other targets in the area in terms of

1 consideration for closure, look to see that production  
2 wells nearby, are there any that are impacted or  
3 threatened; if so, what are they. Are they really  
4 threatened or not. Are there any other exposure pathways.  
09:29 5 And, of course, all public comments or negative public  
6 comments need to be settled before we approve the closure.

7 Now, the closures can be an issue and the request  
8 for closures are -- to your second question, Gail, it's a  
9 voluntary program for MNA. There is no one forced into  
09:29 10 the MNA program. It's owner/operator, or I think the rule  
11 says any person who is conducting corrective action may.  
12 That can include the Department as well. It could suggest  
13 that the closure under 263.04 is appropriate. It isn't  
14 mandatory.

09:30 15 Go back to a couple of these points here. The  
16 plume is either stable or shrinking, and natural  
17 attenuation is recurring at a reasonable rate.

18 To the first point, that is -- that's a function  
19 of the case manager and the managers looking at this  
09:30 20 characterization of the site to see whether the site is --  
21 the boundaries of contamination have been adequately  
22 defined. It is something we do every day that's done in  
23 many programs to indicate that, well, we know the  
24 boundaries of it and we can see that the concentrations  
09:30 25 are holding, either steady or, in fact, some of the

1 boundaries might be shrinking based on monitoring the  
2 well.

3 CHAIRPERSON CLEMENT: Quick question about that.  
4 Are you also looking at the impacts of changing water  
09:30 5 levels when you are looking at the extent and the trend  
6 lines?

7 MR. FULTON: Well, that's one of the other  
8 dynamic parts of these reviews. A lot of the information  
9 we have comes in over years and, yes, the water levels  
09:31 10 changing, can change, change our perception of whether  
11 it's -- we can picture our wells still existing or have  
12 they been installed and able to monitor these  
13 concentrations with the water levels that currently exist  
14 today. That's part of the -- that's part of the sites  
09:31 15 characterized question, very top of the page.

16 Well, the challenge with the old sites, yes,  
17 where water levels will rise. But if there is a question  
18 about whether their characterization is complete, that's  
19 certainly evaluated.

09:32 20 Now, the second point here, naturally attenuating  
21 at a reasonable rate, if we look at trends, and for your  
22 reference there is references in the rule how that might  
23 be done. But if you just look at rates that are -- rates  
24 -- I'm sorry, trends in concentration over time, or the  
09:32 25 contaminants are concerned, the best way to show kind of

1 what we looked at is the public notice. Now, there is a  
2 public comment period or requirement for all of the old  
3 foreclosures.

09:32 4 Let me just talk about the notice that was handed  
5 out here. This is what a typical notice looks like for a  
6 closure. Talks about the seven criteria I just briefly  
7 reviewed. It might give some more details about the site.  
8 It looks as an example from one well, our argument, the  
9 concentrations are stable, the plume is stable or  
09:33 10 shrinking, or concentrations are attenuating.

11 Now, in this particular case, you can see the  
12 highest concentration was 22,000 benzene, currently at  
13 130, water quality standard five. Shows you the time that  
14 -- the time span over five years that that reduction has  
09:33 15 occurred. That's part of what's presented there for the  
16 case where the attenuation is occurring.

17 Now, whether that's a reasonable rate or not, I  
18 guess that's in the eye of the beholder, and that's  
19 certainly -- that's something to be looked at in the  
09:33 20 context, are there any nearby wells impacted, is this  
21 facility within a WQARF area, a RCRA area, a DOD site, all  
22 those things are looked at. In fact, those folks are part  
23 of the public notice of target, that the site is within a  
24 quarter mile or so of any of the sites we look to get that  
09:34 25 notice out.

1           The notice is required to go to a number of  
2 individuals in reference to the rule here. It happens to  
3 be the very last thing in the rule, I think.

4           Joe, you might help me with the list of who gets  
09:34 5 the notice. I know it is well owners and operators.  
6 There you are. You got it?

7           CHAIRPERSON CLEMENT: I think it's in our  
8 handout.

9           MR. FULTON: Go figure. Obviously we're going to  
09:34 10 have a public meeting, but the notice goes out to the  
11 owner/operator, owner of the property directly affected,  
12 DWR, county, municipality, water service providers, and,  
13 of course, anybody else you might think should know about  
14 what. So we usually error on the side of more than less,  
09:35 15 quite a few of these targeted letter notices, field  
16 comments and away we go.

17           CHAIRPERSON CLEMENT: How do you interpret the  
18 other parties directly affected or potentially directly  
19 affected by contamination from release?

09:35 20           MR. FULTON: Well, as an example, a WQARF site,  
21 for example, if this site overlies a WQARF area, perhaps  
22 more often than not petroleum is the major contaminant  
23 concern in a WQARF site. The closure of that site might  
24 be of concern or interest to those who are working out  
09:35 25 there at the site, responsible parties, or otherwise, so

1 that would be another group we can look at.

2 CHAIRPERSON CLEMENT: Would you notice the DEQ  
3 WQARF management chain or the natural DOD site?

4 MR. FULTON: I would certainly consult with the  
09:36 5 project managers at those sites to help us identify who  
6 else might be interested, so there is a program crossover  
7 in that regard.

8 Of the closures we've done, I've looked, there is  
9 only three that are anywhere near WQARF or DOD, NPL sites.  
09:36 10 So I need to go back and look at how those were noticed  
11 out, but we do look at how these sites really space, the  
12 those source sites, DOD or NPL, whatever the program we  
13 can think of.

14 CHAIRPERSON CLEMENT: Thank you. Any questions?  
09:36 15 Karen?

16 MS. GAYLORD: Well, I have more of a concern. I  
17 was going to raise it with respect to our annual report as  
18 well. I think when we -- if you look at the criteria, it  
19 takes into account existing wells, but it doesn't take  
09:37 20 into account the needs of the water provider for the water  
21 supply and the aquifer for future drinking water purposes,  
22 and the assumption we made going into the MNA program was  
23 that there would be some transfer of risk from the  
24 responsible parties to the state, when we approved them,  
09:37 25 an MNA closure, and that there would be funding available

1 at the state in case there was a change in circumstances,  
2 in case the plume that we thought was shrinking didn't  
3 shrink, in case the water supply needed access for water  
4 during drought or for unexpected future needs. And so we  
09:37 5 expected that there would be this pool of money available.

6 Now that that pool of money is uncertain or has  
7 gone, I wonder whether we shouldn't recognize that. At  
8 least in the annual report, I think we ought to recognize,  
9 when talk more about the two items and we talk about  
09:37 10 whether we've got the need for additional assurance  
11 account money, and then we've got the evaluation and  
12 recommendations for the phaseout of the SAF.

13 And I think we need to recognize for the  
14 legislature that we may need to either change the way we  
09:38 15 make decisions on the closure of these sites where there  
16 continues to be groundwater contamination, or we at least  
17 need to make sure the legislature understands the  
18 consequences of continuing to close these sites where  
19 there continues to be groundwater contamination that  
09:38 20 somebody may have to deal with in the future.

21 CHAIRPERSON CLEMENT: Well, these are actually --  
22 if I understand this correctly, there is two issues here,  
23 one is, many of these closures are not going into the MNA  
24 program, and then how is the MNA program managed and  
09:38 25 funded.

1 MR. FULTON: If they're closed, they're not going  
2 to go into the MNA program, but there are certainly a  
3 number of MNA eligible sites out there that may not be  
4 closeable, they are not closeable under 04, but they're  
09:38 5 going to be candidates for closure, and that's a  
6 problematic -- I wouldn't say a worry for me, but as  
7 particular facilities might choose to apply to go into the  
8 MNA program, which we now have one, I would like to know  
9 that there is some money there to take care of the  
09:39 10 management. That was part of the deal -- you've already  
11 heard about deals, right? The deal for -- as part of  
12 softening the blow of the fund going away was to backstop  
13 these sites that are hard to close or they might take a  
14 long time. The state would do that with some money.

09:39 15 Well, the money part of the deal might be  
16 changing, but the rest of the criteria for coming in the  
17 program may not, as you just pointed out. Look at the  
18 rules and statutes for the MNA program, I don't know that  
19 we have any authority or ability to deny anybody's request  
09:39 20 to come into the MNA program. But we need to look at  
21 that. I'm not saying that we want to. I'm saying we are  
22 looking at these applications with a little bit of  
23 questioning about, wow, I'd like to bring people in with  
24 the knowledge that there's going to be a resource to  
09:40 25 manage these sites and we are expected to do under statute

1 and rule.

2 So, that is a big element, might be in the annual  
3 report. It's certainly going to be a component of what we  
4 talk about in September 1, '09. The Department needs to  
09:40 5 submit a report to the Governor and legislature that  
6 describes the looking forward of the funds, State  
7 Assurance Fund, and that's going to be an element of that  
8 discussion as well.

9 CHAIRPERSON CLEMENT: Ms. Gaylord.

09:40 10 MS. GAYLORD: When I referred to MNA closure, I  
11 should have referred to MNA approval, but I'm interested  
12 about the comment you made that you're not sure the  
13 Department has the ability to deny an MNA approval if they  
14 meet these criteria.

09:40 15 MR. FULTON: That's certainly the way it looks to  
16 me, but I'm no legal scholar. But here it says a  
17 condition for approval of an MNA program application.  
18 After receipt of an application submitted in accordance  
19 with the rule, the Department shall review, approve, deny  
09:41 20 or request modifications to the application. The director  
21 may deny an application of approval which would present an  
22 imminent and substantial danger to the public health,  
23 welfare of the environment, kind of a high bar. The  
24 Department may request additional information for act --  
09:41 25 the Department shall approve the application if the

1 applicant has demonstrated to the Department's  
2 satisfaction the information submitted is true, accurate  
3 and complete. Approval of an application means that no  
4 further action letter is described under subsection E will  
09:41 5 be sent to the applicant, and the Department will perform  
6 future corrective action according with subsection F.

7           The shall part gets me, and so I'm not saying  
8 we're looking for ways to get out of bringing sites into  
9 the program, but funding is one of the criterion from  
09:42 10 which we would accept a site into the program, so that is  
11 a big target to keep an eye on as our budget challenges  
12 continue.

13           CHAIRPERSON CLEMENT: Ms. Gaylord.

14           MS. GAYLORD: Well, I guess, in consideration of  
09:42 15 the uncertainty about future funding, I feel like maybe  
16 now we need to consider the impact on the future water  
17 supply. I'm not sure that local water providers  
18 understand, when they get the notice of a closure or any  
19 other kind of notice, I'm not sure they understand that  
09:42 20 you're going to be leaving groundwater contamination sites  
21 that may not be dealt with by the Department in the future  
22 as a matter of change or that, you know, for instance, you  
23 might find the plume is stable. The plume might be there  
24 for a very long time. Natural attenuation might be very  
09:43 25 slow.

1           And I wonder, do you think they understand that  
2 if their needs change ten years from now and they need to  
3 drill a well, that they could be precluded from doing  
4 that?

09:43 5           MR. FULTON: I've not engaged in any give and go  
6 on comments to this from a water provider. But, Joe, do  
7 you have something to add?

8           MR. DROSENDAHL: Yeah. It seems like, you know,  
9 we've been talking about the MNA program and the  
09:43 10 groundwater LUST case closures. Those two things are  
11 totally separate. With the groundwater LUST case  
12 closures, there never was any thought that if we had to  
13 reopen those sites, DEQ would take over whatever's left.  
14 Basically, if we have to reopen a site, the responsible  
09:43 15 owner and operator would be, you know, asked to do the  
16 work, and, of course, if they don't exist, then it would  
17 be a State Lead site. It's only with the MNA program that  
18 there was some deal that, if anything needed to be done in  
19 the future, DEQ would do it. So I just wanted to make  
09:44 20 that clarification.

21           MS. GAYLORD: And just to clarify, using the  
22 terminology loosely, I'm talking about MNA only.

23           MR. DROSENDAHL: MNA program? Okay.

24           MR. FULTON: I'm sorry if I muddied the waters  
09:44 25 with that. But I don't know what the water providers

1 perceive in these closure -- these are, as Joe pointed  
2 out, these are the closures, whether they --

3 One of the challenges of risk-based closures at  
4 any time over a duration, conditions can change. A new  
09:44 5 well might go in next door. It wasn't threatened before,  
6 but it is now. That's your point about future uses. And  
7 it's pretty hard to gauge risk-based closures. That's a  
8 challenge for risk-based closures of all kinds across the  
9 Department.

10 MS. GAYLORD: No. I think the fault was mine. I  
11 was using the term too loosely. But when you are asked to  
12 approve an MNA, whatever we call it, I thought it was  
13 called an MNA closure, but it's apparently not. But when  
14 you're asked to approve monitored natural attenuation for  
09:45 15 a site and take it into the MNA program, do the water  
16 providers have sufficient knowledge at this point about  
17 the impact of that and the possibility that the Department  
18 won't have the funds to deal with placement site in the  
19 future?

20 MR. FULTON: Well, I don't know what if any  
21 public comment is required to bring a site into the  
22 program. Do you, Joe? Into the MNA program. I don't  
23 think there is any.

24 MR. DROSENDAHL: No, there is none. When we were  
09:45 25 doing the rules that created both the groundwater LUST

1 case closures and also the MNA program, we purposefully  
2 contacted the City of Phoenix, City of Tucson, SRP in  
3 regards to making sure that they were on board with the  
4 rule in regards to, you know, the aquifers still being  
09:46 5 above the Aquifer Water Quality Standard and make sure  
6 that they did understand what it actually means.

7 CHAIRPERSON CLEMENT: Ms. Gaylord.

8 MS. GAYLORD: Yes. And actually I talked to Phil  
9 at the time as well, and -- because I represented a few  
09:46 10 cities at that time, and our comfort level was the direct  
11 result of the funding that we thought was going to be  
12 available. So -- and I think that was the case.

13 Certainly I talked to Karen O'Regan, and she talked to her  
14 water people, and that was the case with them as well,  
09:46 15 there was going to be money available to deal with  
16 uncertainties that might result.

17 MR. FULTON: There is a place to go if things  
18 don't go as planned.

19 MS. GAYLORD: And that was Phil's assurance, you  
09:46 20 can come right back to this Department if this thing goes  
21 awry.

22 MR. DROSENDAHL: That's with the MNA program, not  
23 the groundwater LUST case closures.

24 MS. GAYLORD: Just talking about MNA.

09:47 25 MR. DROSENDAHL: Okay.

1 CHAIRPERSON CLEMENT: Just to clarify, we only  
2 have one applicant in the MNA program right now?

3 MR. DROSENDAHL: That's correct.

4 MR. FULTON: We just got it a couple of days ago.

09:47 5 CHAIRPERSON CLEMENT: So, this is my confusion  
6 point. Can the agency require an applicant that's going  
7 for a LUST closure or suggest even that they enter the MNA  
8 program rather than the closure because you are closing a  
9 number of sites with fairly significantly high numbers  
09:47 10 relative to the Aquifer Water Quality Standards. How is  
11 that dysfunction -- I mean, what's the real crux? I mean,  
12 what is the time, reasonable time period, you know, what's  
13 the horizon, how do you really distinguish what you're  
14 comfortable with? And I know we've gone over these  
09:47 15 things, but I don't understand it yet.

16 MR. FULTON: There is no hard line written in  
17 rule that's part of what makes the MNA evaluation, as I  
18 pointed out, subjective. Talks about reasonable. Talks  
19 about containment. Talks about stable water drinking,  
09:48 20 these are subjective terms. But you're asking at what  
21 point might somebody come in and say, well, I want an 04  
22 closure. We might say, well, either approve or deny that.  
23 And if they take a second run at it and say, well, I want  
24 to do MNA instead, that's something we need to consider.

09:48 25 And I think a lot of these might go that

1 direction. As the fund goes away and the money that's  
2 paying for these requests and actions goes away, now we're  
3 going to see a lot of that 68 percent of these groundwater  
4 sites might end up heading toward the MNA program.

09:48 5 CHAIRPERSON CLEMENT: Ms. Gaylord.

6 MS. GAYLORD: And I guess, switching back to  
7 closure now, what's reasonable today seems different than  
8 what was reasonable a year ago. It seems like if we -- if  
9 we have some uncertainty about whether a plume is  
09:49 10 expanding or is stable, if we have some uncertainty about  
11 whether there is a small change it might impact existing  
12 wells, maybe that uncertainty is less acceptable today  
13 given that we don't have the funding to deal with  
14 consequences if we guess wrong.

09:49 15 MR. FULTON: Certainly policy enters into all  
16 these decisions that are based on these subjective terms,  
17 right, stable shrinking, acceptable rate. So, I agree. I  
18 agree. Again, it can change based on our ability to be --  
19 our risk aversion is directly connected to how much money  
09:49 20 we might have in the bank to take care of things that come  
21 along, I agree.

22 MS. GAYLORD: And the other change in  
23 circumstances that we were relying on the idea that we  
24 could reopen and that the responsible party might take  
09:50 25 additional action, that seems less likely in these

1 changing times as well, doesn't it?

2 MR. FULTON: If there is a closure done, yes.  
3 When we have foreclosure, we can go back to the legal  
4 responsible party if they are around in ten years. If  
09:50 5 not, then it becomes, as Joe said, the State Lead project,  
6 which means it taxpayer's fund, whatever it takes to do  
7 whatever site work is necessary so...

8 I didn't mean to dodge your question, Gail.

9 CHAIRPERSON CLEMENT: Well, I'm going to ask it  
09:50 10 again. What would be considered a reasonable time for  
11 reaching our water quality standards?

12 MR. FULTON: Well, I think it depends on the  
13 setting upon which we're working. If it's out in -- just  
14 say, for example, it's out in the middle of nowhere versus  
09:50 15 in the middle of a productive well field, is it different.  
16 I think it is.

17 That's why we have to rely a little bit on our  
18 professional judgment, but also very heavily on the public  
19 noticing and calendar. Those that are directly impacted  
09:51 20 to tell us if that's a reasonable -- if we're making any  
21 reasonable assumptions, I guess.

22 So, it's much like -- and I will go back to my  
23 WQARF roots, when we have to look at reasonable and  
24 necessary and we look at time frames, land and water use  
09:51 25 studies for site closures or for site characterization,

1 which rely very heavily on users to understand what  
2 reasonable means.

3           So, that's kind of where we have to lean on the  
4 public comment aside and say, well, we think this is  
09:51 5 reasonable, what do you think, what do you think as a  
6 water provider.

7           And if they are not taking a hard enough look at  
8 it, perhaps either the closures or eventually into the MNA  
9 program, I don't think MNA is your question, but we can --  
09:52 10 just have to lean on the water users to help us engage  
11 what reasonable is. That's why there is a public comment  
12 function.

13           CHAIRPERSON CLEMENT: Manoj.

14           MR. VYAS: Following up on that, Mike, wouldn't  
09:52 15 that comfort zone be a lie, if it is true, because any new  
16 well for drinking water purposes that is dug or permitted  
17 in the State of Arizona must go through the Arizona  
18 Department of Water Resources to establish the sample  
19 quality, and in compliance with the establishing via  
09:52 20 standard for drinking water supply.

21           So, my hope is that somewhere in the review  
22 process, whether pre-closure or afterwards, there is some  
23 connectivity in terms of the Department of Water Resources  
24 asking the tank program, or ADEQ, and saying, are there  
09:53 25 any sites, are there any contaminations identified, is the

1 plume alive, is it settled, whatnot, go back, re-review  
2 and approve it, go back to DEQ and take the LUST  
3 consideration into account before approving of a site,  
4 especially the new ones.

09:53 5 CHAIRPERSON CLEMENT: Ms. Gaylord.

6 MS. GAYLORD: That's exactly correct, and that's  
7 actually the problem, because with the advent of those new  
8 rules, that offer is now off limits to the water supplier  
9 for so long as the plume is there. So, in effect, you've  
09:53 10 shifted the burden from the responsible party. If the  
11 responsible party cleanup is ended, either because it goes  
12 into the MNA program, and the responsible party goes home,  
13 now that aquifer is off limits in effect to the water  
14 supplier until that natural attenuation takes place.

09:54 15 If the water supplier needs it, let's say you've  
16 got a site closure and you've evaluated the middle of  
17 nowhere site and thought that it was reasonable for that  
18 natural attenuation to take a very long time, but that  
19 middle of nowhere site becomes Anthem, you know, the  
09:54 20 economy changes, it's Anthem, you need the water supply.  
21 And he's already saying, well, we can't tell you how to  
22 construct this well to avoid a contamination. We think  
23 you shouldn't drill here.

24 Well, that's exactly the problem, and at the time  
09:54 25 that we were struggling with the MNA idea in its early

1 stages, Phil McNeely felt strongly that there would be  
2 safety nets there, that there would be the State Lead  
3 program, there would be funding available from the  
4 legislature after the whole SAF program ended, there would  
09:54 5 be alternatives for sites where the groundwater has not  
6 yet been cleaned up but the water supplier needs to assess  
7 the water, and those safety nets seem no longer to be  
8 available.

9 MR. FULTON: So, back to your question, what's  
09:55 10 acceptable. And I start with risk aversions is  
11 proportional to, and you say we're reckless with the  
12 money, but if there is a backstop for things when they go  
13 long, we can look at some closures in that regard. But  
14 it's not a primary consideration now. We are closing  
09:55 15 sites right now, just looking at trends, and our best  
16 professional judgment about what reasonable rate means and  
17 heavily relying on public comment as well.

18 If you have any suggestions how we might change  
19 our noticing, we're trying to be very targeted about it,  
09:55 20 target people with written communication who might be most  
21 interested, that would be very welcome.

22 CHAIRPERSON CLEMENT: Are you closing sites that  
23 have off-site groundwater contamination of numbers that  
24 are appreciably with aquifer water quality standards?

09:56 25 MR. FULTON: It could be.

1 CHAIRPERSON CLEMENT: And then we've talked about  
2 reasonable time frames. Could you bracket that for us,  
3 such as you're in a productive well field versus you're in  
4 a nothing happening area?

09:56 5 MR. FULTON: I think the reasonable time might  
6 have something to do with it. Does that stand a chance of  
7 attenuating on its own and the time is reasonable or  
8 comparable to something that you might achieve through an  
9 active means, a pumping tree, or something like that. But  
09:56 10 these are all -- it may weigh as professional judgment  
11 based on the information that's available when we get  
12 closure requests. We've got to have a full-blown  
13 feasibility study.

14 So, I'm not saying that the level of -- the  
09:56 15 review is less strict than might be under a CERCLA site,  
16 but I think as the sites are more compact, contamination  
17 tends to be in the upper aquifers and not necessarily in  
18 the production zone aquifers. I am not trying to diminish  
19 the water providers' concerns. These sites seem to be  
09:57 20 lesser impact, and you might see a UST site and CERCLA  
21 site. We are looking at things. That gauges our question  
22 about what's reasonable.

23 CHAIRPERSON CLEMENT: I mean, that is a  
24 significant issue, whether the aquifer itself has the  
09:57 25 ambient conditions that make it untenable without any

1 treatment anyway. I mean, I think that's certainly a  
2 condition that we would want to consider. But, you know  
3 are you talking five years, fifty years? I'm just really  
4 trying to understand the bracket of reasonable time. And  
09:57 5 if you've got it in the criteria, you must have some sense  
6 of that.

7 MR. FULTON: No. Joe?

8 MR. DROSENDAHL: No, We don't have any clear  
9 numbers on reasonable rate, just like we don't have any  
09:58 10 fast number on what's an acceptable concentration. A lot  
11 of the plumes that we've looked at, you know, internally,  
12 we've kind of said they're conference room plumes, because  
13 the plume is about the size of this room and there is only  
14 one monitor well contaminated, and the plume's been stable  
09:58 15 for the last five, seven years, it's not moving.

16 So those are the kind of things that we've kind  
17 of, you know, considered. And, also, you know, we've been  
18 getting a lot of requests from owners and operators for  
19 this kind of closure, so the owner/operators and their  
09:58 20 consultants are saying that, yeah, natural attenuation is  
21 occurring at a reasonable rate, there are no receptors  
22 threatened, there is no other exposure pathways, so we're  
23 getting a lot of requests from actual owners and operators  
24 that, yeah, things are protective.

09:59 25 CHAIRPERSON CLEMENT: I'm sure you are, I mean,

1 especially as the money goes away, that will become an  
2 even greater pressure in the program, which is why I  
3 wanted to bring it up at this point, because none of us  
4 want to be surprised. Whether it's a funding issue or a  
09:59 5 contamination issue or a public water supply, we really  
6 want -- you know, this program was set up to deal with  
7 this situation. It has had 20 years, and we all know  
8 human nature, this is going to come down to the end and  
9 you guys in DEQ is going have a lot of pressure from  
09:59 10 different stakeholders on these issues.

11 So, you know, my suggestion is, as much as you  
12 can quantify the criteria that you are using to evaluate  
13 so that it stands up in the future, you may want to  
14 consider that.

09:59 15 And the other just major technical point I'd make  
16 is, I'm seeing on all of my CERCLA and WQARF sites, that  
17 within the source areas, water levels, if the source has  
18 not been removed, water levels have enormous impact on the  
19 concentration in the water. So if you are looking at  
10:00 20 attenuation times and you are not evaluating what's  
21 happened with water levels and source, you are kind of  
22 missing the boat, I think, and I'm not sure you are not  
23 doing that, I'm just saying that that is a really  
24 important criteria.

10:00 25 And so now on all of my sites, we're plotting

1 water level and water concentrations to see what the  
2 trends are versus is it natural attenuation, versus, gee,  
3 we don't have water anymore in the zone of contamination.

4           So, there is an apparent declining concentration,  
10:00 5 and we all know that in this major metropolitan area,  
6 anyway, we have seen a groundwater decline, even though we  
7 have seasonal fluctuations, and recently a fairly minor  
8 rebound, but we are seeing a long-term regional, I just  
9 caution, in case we get a bunch of wet years, we don't  
10:01 10 want a bunch of these sites causing problems in the  
11 future. And I hope that you're looking at that water  
12 level question very seriously.

13           MR. FULTON: The data set quality is the first  
14 step in looking at the closure requests, I think, and it's  
10:01 15 part of one of our challenges when we have old sites,  
16 someone might bring in an old site characterization report  
17 from ten years ago, and say, well, this is how I'm going  
18 to design my system, okay. Well now the water levels have  
19 changed, or those are things that we need to talk about  
10:01 20 that before we can approve or close a site, bringing out  
21 these apparent conditions exist, but also have a  
22 sensitivity how things can change in the future and make  
23 these decisions.

24           So, it isn't -- it isn't a hard task in terms of,  
10:01 25 you've met the standard, here's how we define reasonable,

1 within five years, ten years. It's alluded in many  
2 programs in trying to decide what reasonable means. We're  
3 willing to look at whatever suggestions you might have to  
4 that, but a lot of these discussions come to be discussed  
10:02 5 at a public comment time.

6 CHAIRPERSON CLEMENT: One thing that I think  
7 would be of actually more, and I know water providers have  
8 an issue, but I think it is even more important would be  
9 for those areas where the operating units are used for  
10:02 10 water supply, and you have an even less sophisticated  
11 group of people in rural areas or even some of the  
12 critical sub basins where people have water supplies, so I  
13 hope that that may be one of the criteria that you  
14 consider, because those people are the least likely to  
10:02 15 know what hit them and to have a representative at the  
16 table, and to be the most dependent on that water.

17 MR. FULTON: So I picked a poor example for the  
18 out in the middle of nowhere site, not necessarily the  
19 greatest example, because those are the areas that tend to  
10:03 20 go be tapped in the shallow zones, domestic supplies, but  
21 poor example. But nearby uses is what I was trying to  
22 give an example in terms of what reasonable means, but you  
23 are right.

24 CHAIRPERSON CLEMENT: Any more other questions or  
10:03 25 comments?

1 MR. VYAS: One simple suggestion, given the time,  
2 the opportunity of the staff, I know you have the burden,  
3 maybe you'd want to contact the Department of Water  
4 Resources to at least have the benefit of what criteria  
10:03 5 and/or evaluation they go through prior to approval of a  
6 new drinking water supply site, and just at least be aware  
7 of it so, even though you cannot quantify that time zone  
8 in terms of decontamination or natural attenuation, at  
9 least knowing what they will approve, if there are any  
10:04 10 triggers or flags that go up in your data set analysis, at  
11 least there is some sharing involved, if nothing else.

12 MR. FULTON: There is -- Manoj, there is  
13 information sharing in the letter we sent, goes to the  
14 same coordinator at DWR as to the WQARF sites, so that  
10:04 15 information is exchanged.

16 But I think you brought up a good point and Karen  
17 responded, does DWR prevent or react to what they see.  
18 I think the questions are, they are reacting by saying,  
19 okay, well, this plume exists, and now you as a well  
10:04 20 driller or well owner, you have to do these certain things  
21 to avoid the contamination, screen the wells in certain  
22 areas or don't drill at all, which means that the burden  
23 gets pushed back to the water right holder or the well  
24 driller versus the no, clean it up all the way before you  
10:05 25 get closure, so that's a challenge we are facing in WQARF

1 and UST, but that interaction does occur at DWR as well.

2 MR. VYAS: Thank you.

3 CHAIRPERSON CLEMENT: Any other comments or  
4 questions? Very good. Thank you very much.

10:05 5 I have one other comment, and I think the  
6 Technical Subcommittee may want to just consider this as a  
7 future topic for further evaluation. And I just -- you  
8 know, we can talk about it, but this just seems to be a  
9 real ambiguous yet extremely important component as this  
10:05 10 program phases out.

11 MS. CHABERSKI: Reasonable time.

12 CHAIRPERSON CLEMENT: Reasonable time and  
13 technical criteria, so just a suggestion.

14 MS. CHABERSKI: I just had a comment or question.  
10:06 15 I know you've been dealing with this for a long time, what  
16 reasonable time is. I don't know, is there anything -- if  
17 we go down that path in having the meetings, is there  
18 anything in place that DEQ can provide how you, you know,  
19 that you've been looking at so far?

10:06 20 MR. DROSENDAHL: No, there is no guidance at the  
21 state level or even at the federal level on what  
22 reasonable is.

23 CHAIRPERSON CLEMENT: Site specific issues?

24 MR. DROSENDAHL: Very subjective.

10:06 25 MR. FULTON: Again, if you have suggestions about

1 who -- again, because of that, that we need to contact to  
2 engage in the conversation about offering up opinions  
3 about what reasonable means, that's kind of what I talked  
4 about, if we're missing something, let me know. Now I can  
10:06 5 describe better who it is we send these notices to, but  
6 we're trying to be more inclusive than less. Some people  
7 might get these letters and wonder what they are, but I  
8 think we are targeting the people as we find them.

9 CHAIRPERSON CLEMENT: If you are in a rural area,  
10:07 10 would you do a DWR well search and contact well owners?

11 MR. FULTON: I know we do a survey. I don't know  
12 what level we contact anymore. Joe?

13 MR. DROSENDAHL: I think that the rule is, we  
14 contact all the property owners that are affected by the  
10:07 15 plume, whether they have a well or not.

16 MR. FULTON: Okay.

17 CHAIRPERSON CLEMENT: So, for example, if it was  
18 an off-site release, and you knew where the contamination  
19 was, you would have to know where the contamination was,  
10:07 20 then that property owner would be noticed.

21 MR. DROSENDAHL: And probably the next-door  
22 property owner.

23 CHAIRPERSON CLEMENT: I'm assuming that would be  
24 sufficient if they had a domestic well, that they would be  
10:07 25 noticed?

1 MR. FULTON: We do also look at 55 registries and  
2 find out which wells are registered in the area as part of  
3 that.

4 CHAIRPERSON CLEMENT: Thank you.

10:08 5 MS. CHABERSKI: I just have a comment on the  
6 public notice, not even remembering what the last one  
7 looks like. Maybe as we go forward and start closing the  
8 sites that are like this, that are impacted, maybe it  
9 would be a no action item now, just to look at how the  
10:08 10 public notice reads, because we all know we get these,  
11 even water providers, someone closing a site, we're not  
12 really looking at the fine print of how it's being closed.  
13 That just might be a suggestion in the future to really  
14 look at how those notices read, as far as user friendly  
10:08 15 for the citizens or highlighting something for the water  
16 provider, where you go, wait a minute, am I planning  
17 development here, or something, so it's just a suggestion.

18 MR. FULTON: This notice that I provided as an  
19 example is very typical. If you see anything in there  
10:08 20 that you think might make your point more strongly, we  
21 will certainly take any suggestions you have.

22 MS. CHABERSKI: Okay.

23 MR. FULTON: We're not going to put a skull and  
24 cross bones on there.

10:09 25 CHAIRPERSON CLEMENT: I think my only comment on

1 this one would be MW1, where its location is, you know, is  
2 it off-site, is it on the property. You know, I mean that  
3 might be helpful to a water provider.

4 MS. CHABERSKI: It's just a suggestion for the  
10:09 5 future maybe to look at these and see how we can make it  
6 more appealing to citizens, water providers, user  
7 friendly. I'm not saying it's not. I'm just saying maybe  
8 it's worth a look to see if there is going to be a MNA, a  
9 higher priority to really understand what's going on.

10:09 10 MR. FULTON: The notice was never drafted I don't  
11 think with the intention of being a self-contained sort of  
12 document.

13 MS. CHABERSKI: Right.

14 MR. FULTON: It's certainly something to get  
10:09 15 people's attention. If they are curious about learning  
16 more, there is contact information about that and a case  
17 manager that can get them whatever it is they want to know  
18 about the site. So, if there are some things that we  
19 could do to improve it if you've got some suggestions.

10:10 20 MS. CHABERSKI: Maybe there isn't any. I'm just  
21 saying in the future if this becomes a concern.

22 MR. FULTON: Okay.

23 CHAIRPERSON CLEMENT: I think at this point,  
24 having the location of the well, whether it's on-site or  
10:10 25 off-site, would be useful.

1           Just one other follow-up thing.  If someone  
2 because, you know, I'm thinking the citizen more than  
3 anyone at this point, if someone had to go and find out  
4 information on their LUST site, if they went to the  
10:10 5 records, would they see like one or two pages that was  
6 your analysis of the closure, would there be something in  
7 writing that had, you know, we looked at this, this, this,  
8 so that it would be easy for them to find, versus digging  
9 through the record itself?

10:10 10           MR. FULTON:  Joe.

11           MR. DROSENDAHL:  Yes.  There's a form or a table,  
12 it's kind of like a check list with all the criteria  
13 listed out, was this considered, yes, and everything.  And  
14 an example of that form was presented at that public  
10:10 15 meeting that was held back in March of 2008.  It's the  
16 Groundwater LUST Case Closure Eligibility Evaluation.  And  
17 it has -- we've kind of altered it over the months, but  
18 it's basically the same thing.  It just kind of documents  
19 that we did look at this and everything, and it does say,  
10:11 20 okay, what is our conclusion.  Yeah, you know, here's the  
21 criteria that it met going for public notice.

22           CHAIRPERSON CLEMENT:  Thank you.  For somebody  
23 that doesn't really understand this type of information,  
24 would be impossible to dig through?  Thank you.

10:11 25           Anything else on that one?  Okay.  Well, that was

1 very informative.

2 MR. FULTON: Okay.

3 CHAIRPERSON CLEMENT: And now to the next agenda,  
4 which is the SAF status.

10:11 5 MR. FULTON: Also provided as a handout, I think  
6 for the fourth month running, kind of gave a real brief  
7 summary of the status of the fund, current status of the  
8 fund. April looks a lot like March. The numbers are  
9 identical, not because -- remember, the fund status is  
10:12 10 based upon our actual beginning balances and our  
11 projection of expenditures and transfers throughout the  
12 rest of the year, so our assumptions would be March and  
13 April didn't change at all.

14 Our projected revenues are holding steady there  
10:12 15 for the year. It's about 28 million, and then our  
16 expenditures are somewhere around 33.

17 Now, the transfers is where the big change  
18 happened between February and March, if you remember. We  
19 had been booking a transfer of 15.7 million to cover some  
10:13 20 other shortfall that didn't materialize, so those  
21 transfers came back out and back in to the balance.

22 MS. CHABERSKI: Is it going to materialize or  
23 taken off for somewhere else?

24 MR. FULTON: I don't know if there is ever a time  
10:13 25 when transfer couldn't occur.

1 MS. CHABERSKI: Wasn't there a specific makeup  
2 that had to be paid back? You're talking about EPA said  
3 to get the funding --

4 MR. FULTON: Right. As Mr. Cunningham, if you  
10:13 5 recall when he came here he talked a bit about the problem  
6 in WIFA that was maybe going to be corrected at the  
7 expense of the State Assurance Fund. That was a solution  
8 offered up by the Director, but it wasn't taken up by the  
9 legislature. They found another source of money.

10:13 10 MS. CHABERSKI: Oh.

11 MR. FULTON: So the WIFA problem solved. But  
12 still, no marker has been laid down. \$15.7 million exists  
13 somewhere, and if we need it, I think it's a healthy, not  
14 overly cynical expectation that the money could still go  
10:14 15 somewhere.

16 MS. CHABERSKI: But it's just going for what?

17 MR. FULTON: So, for the purpose of this  
18 exercise, we are still booking it as available, so that  
19 leaves us pretty close if that transfer was to occur. Our  
10:14 20 balances just aren't -- our carry-forward balance is not  
21 very large at all. We prefer to keep a 90-day balance on  
22 hand, which would be something in the \$6 million range.  
23 That's our target.

24 Need to really re-emphasize again that we aren't  
10:14 25 ranking claims. I don't know that we're going to have to.

1 We're trying to avoid that. That's why we stopped working  
2 on State Lead sites. It's not a perfect solution, but  
3 it's one way we can reduce expenditures from the fund and  
4 leave money available to pay claims.

10:14 5 So I've heard, try to be as clear as possible  
6 about that at meetings, and then I've come back to my desk  
7 and I find three messages on my phone, you are ranking  
8 claims, you are ranking claims.

9 We're not ranking claims. We are certainly  
10:15 10 preparing to do that if we have to because we only have a  
11 certain amount of time to rank them and get payments out  
12 as the money is available. But it's not our intention to,  
13 but it's certainly a possibility. We have to prepare for  
14 it. We are doing that. We have done that. And we just  
10:15 15 have to keep an eye on the budget. It's very dynamic as  
16 it exists right now, and I don't think we're out of the  
17 woods on this in fiscal year 10, which is still being  
18 talked about, and I think we have a couple of tough years  
19 ahead.

10:15 20 Notwithstanding the expiration of the tax, which  
21 feeds into our -- if there aren't carry-forward balances  
22 to build up into a regulated substances fund, now what.

23 If we have sites in the monitored natural  
24 attenuation program, what are we going to do with those,  
10:16 25 so that's a very real -- keeping our eye on that ball, but

1 a lot of things are moving around. We've been watching  
2 the budget. It's not settled by any means.

3 CHAIRPERSON CLEMENT: That was my question. The  
4 original intention for the money was the carryover from  
10:16 5 the SAF funds; correct?

6 MR. FULTON: It would be a balance after all  
7 claims are extinguished, and that balance would be put  
8 into the regulated substances fund, a portion of which  
9 would go toward the MNA, administering the MNA program.

10:16 10 The target was 60 million. We could argue about  
11 how 60 million was arrived at. I've had my own questions  
12 about that. I'm sure I will be asked that again. But we  
13 might be asked to do with less in terms of how to analyze  
14 that, figure that one out as well, but it will be part of  
10:17 15 our September '09 report about the long-term viability of  
16 the fund, but it's pretty dynamic.

17 CHAIRPERSON CLEMENT: And it just looks like real  
18 money to the legislature when there is this incredible  
19 situation. My goodness, where's that 50. I would assume  
10:17 20 it would be very tempting, and you have FY 2010 coming up,  
21 but that's just July 1.

22 MR. FULTON: Certainly. This is not a unique  
23 program in that regard. Every unaccounted for or  
24 unallocated dollar will be swept. Very tough decisions to  
10:17 25 be made by the legislature about keeping public health

1 services going versus the longer term. Unfortunately, our  
2 long-term is now two years. That's a pretty short  
3 long-term but that's how we're going.

4 CHAIRPERSON CLEMENT: Any questions? Manoj.

10:18 5 MR. VYAS: I just want to -- it's a new question.  
6 Ron, you might know. Mike, you might, too. Because this  
7 is a excise tax, essentially, do you know in the eyes of  
8 the legislature, do the class find out a special level  
9 fund or is it within the umbrella of the general fund?

10:18 10 The reason I ask that is, I also follow the  
11 budget almost every hearing now, and e-mails after e-mails  
12 and everybody's version of it, but if most of the tax,  
13 quote-unquote, to balance the, quote, 2010 budget are in  
14 the general fund, discretionary funding opportunities,  
10:18 15 either stealing, reallocating, reassigning or funding.  
16 So, if it's a special revenue problem, the probability of  
17 preservation is relatively high in the eyes of the  
18 legislature in comparison to it being classified as a  
19 general fund. That's the only reason I ask this question  
10:19 20 is excise tax to me should be classified as a special  
21 revenue fund selfishly, and protective substance fund do  
22 not get compromised. I just wondered if you guys knew  
23 that.

24 MR. FULTON: The excise tax does not contribute  
10:19 25 to the general fund. It's a nonappropriated fund source,

1 but it has been used to help bring the general fund into  
2 the balance to transfers. It hasn't been held sacred. I  
3 wouldn't use the word steal, but you did. Reassigned,  
4 reallocated, transferred, everything is on the table. The  
10:19 5 \$3 billion deficits talked about is in the general fund,  
6 and other funds are being looked at through transfers to  
7 help to bring the fund in balance. Some special use funds  
8 have been targeted, in fact challenged, I think, in court.  
9 Whether that's viable or not, I don't know.

10:20 10 MR. VYAS: As a group of cities, we did challenge  
11 and it was essentially a funding categorization challenge.  
12 We won, but that was, you know, no relief because the  
13 legislature did exactly what you were implying that, they  
14 were looking for other methods to legally reassign and  
10:20 15 reallocate the fund, but they did something else with it  
16 and re-leveling the fund, so I was just hoping that you  
17 were categorizing for an allocated protected category.

18 MR. FULTON: I don't think it's in that category.

19 CHAIRPERSON CLEMENT: Excuse me for just one  
20 minute.

21 Manoj, we have Tamara Huddleston joining us from  
22 the Attorney General's Office, taking over for Joseph  
23 Mikitish.

24 Tamara Huddleston has joined us.

10:21 25 MS. HUDDLESTON: We are doing shifts today.

1 CHAIRPERSON CLEMENT: Shift two.

2 MR. FULTON: I kind of forgot where I was here on  
3 this -- there is really nothing more to point out beyond  
4 the last couple of months, where the transfers had  
10:21 5 occurred. So, to your point, Manoj, about, it's a special  
6 fund. There's been transfers out of the fund throughout  
7 the year and prior years as well.

8 It didn't materialize, so that's why the balance  
9 I think in February might have looked at 300 and some  
10:21 10 thousand dollars balance, which got everybody's eyes  
11 opened. Now it looks like 15.2. All that is subject to  
12 change.

13 So, we're keeping an eye on it every day, new  
14 balances every month, and track claims as they come in,  
10:22 15 and revenues as they come in, and see that those trends,  
16 hopefully those trends are going to hold. I think our  
17 revenue trends are finally showing flat, not falling  
18 anymore. But the claims are always the wild card, how  
19 many might come in, what size are those claims, so keep an  
10:22 20 eye on it every day.

21 CHAIRPERSON CLEMENT: Good.

22 MR. FULTON: That's all I have for the stats  
23 report.

24 CHAIRPERSON CLEMENT: Any questions or comments  
10:22 25 on that?

1           Let's move on then to, if there are any recent  
2 legislation in the rules you would like to mention.

3           MR. FULTON: No recent legislation or rules, just  
4 routine. We are on a hiatus for rule development. The  
10:22 5 rule we had in mind was for operator training. Part of  
6 the Energy Policy Act, the federal legislation for the  
7 fund. We still need to implement that requirement. It's  
8 on our list as a Department. It is just right now being  
9 evaluated in the Governor's Office about which rules are  
10:23 10 going to be moved forward right away, so that's still on  
11 our list. We are not moving forward right now, and when  
12 it does move forward, we will have plenty of stakeholder  
13 involvement early on.

14           And legislation, I haven't seen any. It doesn't  
10:23 15 mean something is not planned, but we don't have anything  
16 on the table as a Department or UST.

17           CHAIRPERSON CLEMENT: Question?

18           MS. CHABERSKI: I have a question on the rules.  
19 I know there was a freeze on the rules until April, I  
10:23 20 thought, from the Governor's Office. Do you know the time  
21 frame on this issue at all? Has it been extended?

22           MR. FULTON: I thought it was through June.

23           MS. CHABERSKI: That's why I'm asking. I'm not  
24 sure.

10:23 25           MR. FULTON: It's through the end of the fiscal

1 year, I believe, but I would have to look at the -- at an  
2 earlier meeting, I provided the actual memo communication  
3 from the Governor's Office to the Department, I think it  
4 was June.

10:24 5 MS. CHABERSKI: Okay. And there hasn't been any  
6 updates since you received that?

7 MR. FULTON: No.

8 MS. CHABERSKI: Thanks.

9 CHAIRPERSON CLEMENT: Okay. Anything else, any  
10:24 10 questions, comments? Anything else, Mr. Fulton?

11 MR. FULTON: No. I've talked enough.

12 CHAIRPERSON CLEMENT: I'm sure you feel that way.

13 The next agenda item is the Evaluation  
14 Subcommittee update. Mr. Bunch was intending to be here,  
10:24 15 but his calendar was incorrect and he had a meeting down  
16 for tomorrow, so he was not able to join us. And I do  
17 know he will make that update. Ms. Gaylord.

18 MS. GAYLORD: Mr. Bunch did want me to inform the  
19 Commission that he plans to have a meeting in May.

10:24 20 CHAIRPERSON CLEMENT: Okay.

21 MS. GAYLORD: And he will be sending out a notice  
22 on the date.

23 CHAIRPERSON CLEMENT: Great. That is the update.  
24 There will be an Evaluation Subcommittee meeting in May.

10:25 25 There was not one in the last two months, so there is

1 really nothing to report from that subcommittee.

2 Did he mention the agenda items that he's  
3 interested in?

4 MS. GAYLORD: He did not.

10:25 5 CHAIRPERSON CLEMENT: We will make sure that gets  
6 out sooner than later so people can plan for that.

7 MR. FULTON: Just to mention, I will ask that he  
8 -- I know it's been on his agenda to talk about the stop  
9 use order and the termination order. That also is part of  
10:25 10 the Energy Policy Act. We've drafted those orders. That  
11 is supposedly before that in the subcommittee. We had one  
12 meeting to talk about it, and we haven't revisited it  
13 again, so we are interested in getting back to that.

14 CHAIRPERSON CLEMENT: Okay. I will contact Bill  
10:26 15 after this meeting, make sure that we remind him. Thank  
16 you, Karen.

17 The Technical Subcommittee update. We have both  
18 chairs, Theresa Kalaghan and Catherine Chaberski.

19 MS. CHABERSKI: We didn't meet. I don't have an  
10:26 20 update.

21 I do have a question about something you brought  
22 up earlier about getting an agenda item approved now. You  
23 had said you thought it was a good idea to open up on a  
24 discussion on reasonable time. Is that --

10:26 25 CHAIRPERSON CLEMENT: Well, I'm open for that

1 discussion. I mean, how do you and Theresa feel about  
2 that? Are you interested in pursuing the LUST closure  
3 information in more detail or do you think that what we  
4 have has been sufficient?

10:26 5 MS. CHABERSKI: I mean, I was coming from the  
6 front of opening the dialogue stakeholders, not my own  
7 personal opinion to review, but --

8 MS. KALAGHAN: I think that there were enough  
9 items brought up in this meeting that I think that we  
10 should discuss this more.

11 MS. CHABERSKI: I'm open to just having the  
12 meeting, seeing who shows up and the dialogue and opening  
13 dialogue for it. So, I can't make a judgment whether it's  
14 yea or nay. I'm just --

10:27 15 CHAIRPERSON CLEMENT: So do --

16 MS. CHABERSKI: Does anybody from DEQ have the  
17 date of the next Technical Subcommittee meeting with their  
18 calendar? I left mine in my car. Sorry.

19 MS. KALAGHAN: I would recommend we do that in  
10:27 20 June.

21 MS. CHABERSKI: June.

22 MR. FULTON: What day, week of the month is it  
23 usually?

24 CHAIRPERSON CLEMENT: It would be June 10th based  
10:27 25 on the calendar we established at the beginning of the

1 year.

2 MS. CHABERSKI: That would be fine with me.  
3 That's our standard meeting on the agenda and we meet at  
4 10 o'clock now and that continues.

10:27 5 MR. FULTON: It's on my calendar, yes, June 10th,  
6 10 o'clock.

7 CHAIRPERSON CLEMENT: And the main topic, if no  
8 other topics come through, would be --

9 MS. CHABERSKI: Discussing the reasonable time on  
10:28 10 closures.

11 MS. KALAGHAN: Closure criteria in MNA.

12 MS. CHABERSKI: That's good. That opens up  
13 exactly.

14 MR. KELLEY: What would the date be?

10:28 15 CHAIRPERSON CLEMENT: June 10th. The room that's  
16 been set aside is 4001-B, and the meeting starts at  
17 10 a.m.

18 MS. CHABERSKI: And all of this should be on the  
19 web on that schedule. This is a standard date. We  
10:28 20 haven't changed our dates.

21 CHAIRPERSON CLEMENT: What we do, just for your  
22 information is, we establish a calendar a year in advance,  
23 so we can get the meetings on people's calendars because  
24 we're all busy people, and also so we can get rooms set  
10:28 25 aside, and so we do that on purpose.

1           And, then when we don't need those meetings, we  
2 cancel them, and that has been the way the Commission has  
3 operated since its inception.

4           And we -- unless there is a Commission impetus to  
10:29 5 change that, we will continue to do that. So, we do have  
6 a standing meeting, and you can go on the website. The  
7 Evaluation Subcommittee has a standing meeting date, and  
8 so does the Technical Subcommittee, and also obviously the  
9 Policy Commission itself.

10:29 10           MS. CHABERSKI: Just as a caveat, sometimes those  
11 dates are changed, but they are noticed also if they  
12 happen to change. Correct?

13           CHAIRPERSON CLEMENT: Correct. Okay. Anything  
14 else, any other topics we would want to include in the  
10:29 15 Technical Subcommittee meeting?

16           MS. CHABERSKI: I think that would be a good  
17 start for that one meeting.

18           CHAIRPERSON CLEMENT: I think that will be an  
19 interesting meeting.

10:29 20           Okay. On to my agenda item. I get to talk.

21           The annual report or the drafting Arizona  
22 Underground Storage Tank Policy Commission 2008 annual  
23 report was sent out for review in March, and I wanted to  
24 make sure everybody had sufficient time to review it.

10:30 25           Comments were due, and then I also sent out a

1 reminder, and based on the discussion that we've had  
2 today, I think there might be a comment or two, and Ms.  
3 Gaylord is nodding her head.

4 MS. GAYLORD: First, I apologize for being tardy.  
10:30 5 I was really trying to figure out the impact of the  
6 funding, current funding situation on our current funding  
7 at the termination of the program and what the impact  
8 would be on these sites that have residual.

9 Based on our discussion today, I feel like we  
10:30 10 should probably add something in the discussion mandate  
11 four and mandate five, and it doesn't have to be much,  
12 maybe a sentence or two, recognizing that we do not  
13 currently have sufficient revenue or sufficient carryover  
14 to get us to the funding levels we thought we needed at  
10:31 15 the termination of the program, and make a sentence  
16 recognizing that that could have an impact on current  
17 decisions being made by the Department on case closure and  
18 intimate the program approvals, and that there may be  
19 demands on the agency in the future as a result of the  
10:31 20 decisions we are making today that can only be met if  
21 there's funding added here.

22 CHAIRPERSON CLEMENT: I was really hoping to get  
23 this out, but obviously unless we have crafted language,  
24 we can't approve it.

10:31 25 I do have under mandate four, I did address it

1 slightly, but I agree with you, we do need some additional  
2 language in here in light of what we just discussed.

3           The sentence reads, "Additionally, in light of  
4 the phaseout of SAF eligibility, and the establishment of  
10:32 5 a Regulated Substance Fund by SB 1306 (2004), the  
6 Commission will continue to evaluate the need for  
7 additional or alternative funding to meet the Program's  
8 future requirements."

9           And I guess a sentence could be crafted of the  
10:32 10 nature, currently it is projected that there would be  
11 insufficient funds and revenue projected to carry over  
12 to -- you know, I mean, I'm not a financial person, so --

13           MS. GAYLORD: In the past on other boards of  
14 commissions where the concept was approved by the  
10:32 15 committee, we've certainly had the committee board or  
16 commission approve the report with the addition, you know,  
17 trusting the drafter to come up with the right words, and  
18 I would certainly be happy to take a stab at some words.

19           I would say that my suggestion, and it's somewhat  
10:33 20 clumsy, but my suggestion would be to directly recognize  
21 that there was transfers out of this program and it's a  
22 result of those transfers by the legislature that we are  
23 not currently going to be able to meet our projected carry  
24 forward that we've thought was required in order to meet  
10:33 25 the demands on the program.

1 CHAIRPERSON CLEMENT: I'm good with that. Any  
2 other comments and discussions on that? Because I do feel  
3 a little bit of a time crunch here trying to get this  
4 done. It's a little late already, and I really don't want  
10:33 5 it to get into June, if I can avoid that.

6 So the criteria that we would add, just to  
7 clarify the proposal, would be that Ms. Gaylord would be  
8 the drafter, and I would work with Ms. Gaylord to ensure  
9 that the criteria that we've discussed and approved would  
10:33 10 be met. The criteria that we would add to mandates four  
11 and five as appropriate would be, number one, there has  
12 been a transfer of SAF monies out of the program; two, I'm  
13 just clarifying in my mind and everyone else's that,  
14 because of those transfers, it is projected insufficient  
10:34 15 monies will be available to meet the needs of the program.

16 MS. GAYLORD: And here's where we get into the  
17 nuance that Mike addressed earlier. There was this deal  
18 where everybody agreed 60 million was the number. I don't  
19 know whether we can refer to that as what we all thought  
10:34 20 was required at the end of the day.

21 MR. FULTON: It's in session law. It says 60  
22 million will be.

23 MS. GAYLORD: We could refer to session law.

24 MR. FULTON: Or up to 60. I have it around  
10:34 25 somewhere on my desk, I'm sure.

1 CHAIRPERSON CLEMENT: And then three, I think the  
2 third point you made was that if there were insufficient  
3 monies available for these activities, regulated substance  
4 fund, this would affect the ability to close sites, the  
10:35 5 assurance --

6 MS. GAYLORD: And perhaps we should say may, it  
7 may affect the Department's ability to close sites with  
8 residual groundwork contamination above the state  
9 standards?

10:35 10 MR. FULTON: It certainly affects our ability to  
11 reopen sites. That's the back stop.

12 MS. GAYLORD: And it affects your ability to  
13 implement the MNA program.

14 MS. CHABERSKI: I would say both those, or the  
10:35 15 this or that.

16 MS. GAYLORD: My fault.

17 CHAIRPERSON CLEMENT: And then I think the third  
18 point or either that's in that point or a fourth point,  
19 and the fourth is that the water supply, I mean, if these  
10:35 20 sites are not properly monitored over time, that it will  
21 lead potentially to water supply issues.

22 Any other comments on that?

23 MS. GAYLORD: The last thing I'd suggest, I will  
24 draft and submit it to you, but I think the committee has  
10:36 25 a long track record of being very comfortable with your

1 judgement and your drafting leadership, so I think you  
2 should have the approval and ability to veto or change or  
3 whatever.

4 CHAIRPERSON CLEMENT: I don't think that's going  
10:36 5 to be an issue working with you, Karen, but I accept that  
6 responsibility. It is probably -- it is my role as Chair  
7 to manage these things.

8 Anybody interested? Okay.

9 MR. FULTON: Ron.

10:36 10 CHAIRPERSON CLEMENT: Mr. Kern.

11 MR. KERN: Ron Kern here. One suggestion on what  
12 Karen brought up is good, except it's going to be buried  
13 in the report, and my question is how many people actually  
14 look at this. What you might also want to do is emphasize  
10:37 15 that in the priorities for calendar year 2009, that, you  
16 know, just kind of take the same language you just  
17 discussed and put it into this program and talk about it  
18 this year, because it's here and now.

19 CHAIRPERSON CLEMENT: Right. That's a very good  
10:37 20 suggestion. That was part of the awkwardness of drafting  
21 this report is it's a 2008 report, and that's one of the  
22 reasons it wasn't heavily highlighted, because that  
23 activity hadn't occurred. We can also put it in the cover  
24 letter, you know, the Commission does have a concern  
10:37 25 regarding continuing funding, both SAF obligations, but

1 more importantly, future obligations relative to, so when  
2 we have that language, I can incorporate it in the cover  
3 letter. I think that's an excellent suggestion.

4 Is everyone clear on what we're going to do and  
10:38 5 what criteria are going to be placed in this?

6 Okay. Is there a motion?

7 MS. GAYLORD: I was going to ask if you wanted a  
8 motion.

9 CHAIRPERSON CLEMENT: Yes, please.

10:38 10 MS. GAYLORD: I would move that the Commission  
11 adopt, approve the draft report with the addition of  
12 language that captured the concepts we just discussed, and  
13 I can't recite them from memory, unfortunately, but the  
14 concepts that Gail just outlined in rule point four.

10:38 15 MR. VYAS: I second that.

16 CHAIRPERSON CLEMENT: All in favor?

17 (Chorus of ayes.)

18 CHAIRPERSON CLEMENT: Anyone opposed? No.

19 Okay. So, the 2008 annual report is approved  
10:38 20 with the amendments that will be added. Karen Gaylord  
21 will provide those drafts to me. I will incorporate them  
22 in the annual report. They will be included in both  
23 mandate four and five, and also priorities for 2009. They  
24 will be highlighted also in the cover letter that will be  
10:39 25 sent out, so there will be -- I think that will maybe then

1 get the attention of those who receive it.

2 And I thank you very much for your suggestions  
3 and your willingness to do that draft. Okay.

4 Now we will have a call to the general public.

10:39 5 Are there any comments from the general public at this  
6 time?

7 Yes, please.

8 MR. KELLEY: Dan Kelley. I'm sorry, I was waving  
9 my hand before you took the vote, but I think there is one  
10:39 10 more thing we should look at in the report, because the  
11 report is actually being looked at by people down there.  
12 It is also dovetailed with, Madam Chair -- is this report  
13 being provided to the legislature, because --

14 CHAIRPERSON CLEMENT: Yes. Attachments are  
15 provided. They are provided to the members and to the  
16 legislature.

17 MR. KELLEY: This is the monthly thing that Mike  
18 hands out. Here's the problem. Somebody brought this out  
19 the other day. This report shows -- and the issue is  
10:40 20 this: Releases versus sites. So, they have the stuff  
21 that Pat handed out a month or so ago that shows less than  
22 500 sites, then they see this that shows more than a  
23 thousand releases versus site issues.

24 And so -- then there is this giant wait, is it  
10:40 25 500 or is it a thousand? And it's a legitimate confusion,

1 it's very simple to address, and so where it shows up  
2 here, then where it shows up in the report, the Commission  
3 report is for the oversight list of --

10:41 4 CHAIRPERSON CLEMENT: I'm not exactly sure what  
5 you received, but the attachments to the report do include  
6 release numbers as releases, not as sites.

7 MR. KELLEY: Then I will just walk you through.  
8 It's a statistical reconciliation. If you look at the  
9 attachments that you are referring to to the report, it  
10:41 10 says Cumulative LUST Statistics, it shows June of '08, we  
11 had 8486 releases reported; June of '07, 8304, the net  
12 difference is 82 by the chart. By the text it says 22.  
13 And this says 2008, when it really should say FY 2008.

14 CHAIRPERSON CLEMENT: No. It's actually an  
10:41 15 annual report. It's not a fiscal year.

16 MR. KELLEY: Okay. But the statistics are FY,  
17 then the report is annual.

18 CHAIRPERSON CLEMENT: That is actually a good  
19 point.

10:42 20 MR. KELLEY: I only bring it up because people  
21 are actually looking at it right now and trying to make  
22 policy decisions on it, and it's probably something we  
23 need to be aware of is happening.

24 CHAIRPERSON CLEMENT: Thank you very much for  
10:42 25 that. Actually, thank you very much. I appreciate that.

1 Yes, another general comment?

2 MR. MORGAN: Rick Morgan. For the Technical  
3 Subcommittee meeting that's scheduled for June, or going  
4 to be scheduled for June, I would suggest that if you are  
10:42 5 going to attend that meeting, that you review the  
6 difference between MNA and closure, LUST case closure  
7 versus the rule, or using the rule. Have that clear in  
8 your mind.

9 The other thing to maybe ease some of the concern  
10:43 10 by the members of the Commission, as one who has submitted  
11 several closure requests under 263.04, the Department  
12 scrutinizes these to the nth degree, I will guarantee.  
13 They're not just getting rubber stamped. That's all I've  
14 got.

10:43 15 CHAIRPERSON CLEMENT: Thank you very much.

16 Any other public comments? I hate to do this,  
17 but I think we do need to reopen that issue, because the  
18 numbers do not agree, and I do appreciate Mr. Kelley  
19 pointing that out, so I hate to do this, everybody, but I  
10:43 20 do think we do need to make one more -- and I will make a  
21 proposal, one more agenda item or, excuse me, proposal on  
22 this annual report, that DEQ provide the -- not the fiscal  
23 year, but the annual plus statistics. This is an FY  
24 report. It's a calendar year report.

10:44 25 MR. FULTON: I don't think there is a reason we

1 can't do that.

2 CHAIRPERSON CLEMENT: No. We have done it in the  
3 past, and I just frankly didn't notice that.

4 MR. FULTON: Okay.

10:44 5 CHAIRPERSON CLEMENT: Because this is a calendar  
6 year report.

7 And then also when you do that, could you also  
8 check the numbers in the report, and I will do that once  
9 you send them to me also.

10:44 10 So, sorry, I would like to propose as -- that, in  
11 addition to the changes that we have voted on that Ms.  
12 Gaylord will draft and I will incorporate, that we also  
13 have DEQ redraft the statistics, recheck the statistics so  
14 that they are consistent with the graphics, and I will  
10:45 15 also check those statistics. So, could I have a second on  
16 that?

17 MS. CHABERSKI: Second.

18 CHAIRPERSON CLEMENT: Second. All in favor?

19 (Chorus of ayes.)

10:45 20 CHAIRPERSON CLEMENT: Anyone opposed? No? The  
21 annual report is approved with those changes, and I really  
22 do appreciate Mr. Kelley's comments.

23 Okay. Next, summary of meeting action items.

24 I will contact Mr. Bunch. We will get -- he will  
10:45 25 get an agenda for the May Evaluation Subcommittee out, and

1 the time frame for that.

2 The Technical Subcommittee will get an agenda out  
3 for the June 10th Technical Subcommittee meeting.

4 Ms. Gaylord will prepare some additional  
10:45 5 materials for the annual report. I will review them and  
6 incorporate them.

7 DEQ will revise and update the statistics of the  
8 annual report, and I will check for those.

9 I will get the annual report with a cover letter.  
10:46 10 Hopefully, we can get all that done like within the next  
11 week, if that's possible, based on calendars.

12 And then I will provide to DEQ the final annual  
13 report and the original cover letter so that you can get  
14 those out.

10:46 15 MS. CHABERSKI: I noted a detail, and in the  
16 cover letter you are going to highlight the funding issue?

17 CHAIRPERSON CLEMENT: The funding issue will be  
18 highlighted.

19 Anything else, any other action?

10:46 20 Thank you everybody. The meeting is adjourned.  
21 I appreciate everyone's participation. Thanks.

22 (10:46 a.m.)

23

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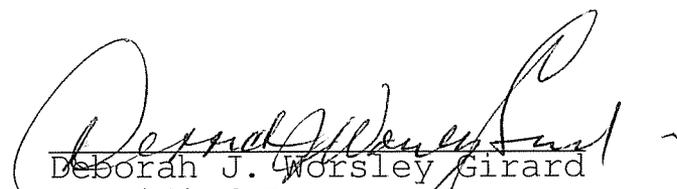
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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 74 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 22nd day of April, 2009.

  
Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477