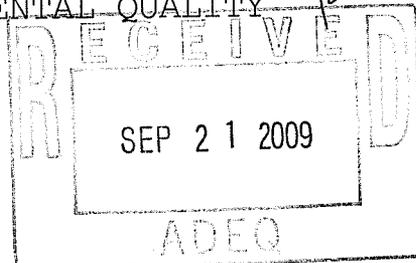


ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
August 26, 2009
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
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(ORIGINAL)

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COMMITTEE MEMBERS PRESENT:

- Gail Clement, Chair
- Catherine Chaberski
- Theresa Kalaghan
- Michael Fulton
- Joe Mikitish, Esq.
- Tamara Huddleston, Esq.
- Jon Findley
- Tricia Johnsen
- Karen Gaylord, Esq.

P R O C E E D I N G S

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09:05

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09:06

09:06

09:06

CHAIRPERSON CLEMENT: Good morning. We are now starting the Underground Storage Tank Policy Commission August 26th, 2009 meeting. And this is a call to order, and we will start a roll call on my left with Ms. Tricia Johnsen.

MS. JOHNSEN: Tricia Johnsen, Safeway.

MR. FULTON: Mike Fulton, ADEQ.

MS. CHABERSKI: Cathy Chaberski.

CHAIRPERSON CLEMENT: Gail Clement.

MS. GAYLORD: Karen Gaylord.

MS. KALAGHAN: Theresa Kalaghan.

CHAIRPERSON CLEMENT: We're here. The next agenda item, approval of the minutes from the July 22nd, 2009 meeting.

Did everybody receive the meeting minutes? And did everybody have an opportunity to review them?

Are there any discussions?

Is there a motion to approve?

MS. CHABERSKI: Motion to approve.

CHAIRPERSON CLEMENT: Is there a second?

MS. KALAGHAN: Second.

CHAIRPERSON CLEMENT: All in favor?

(Chorus of ayes.)

1 CHAIRPERSON CLEMENT: Anyone opposed?
 2 The July 22nd, 2009 Underground Storage Tank
 3 meeting minutes are approved. And for the record, Mr. Jon
 4 Findley has just joined the Commission.

09:06

5 Good morning, Jon.

6 MR. FINDLEY: Thank you.

7 CHAIRPERSON CLEMENT: So, we will move on to the
 8 next agenda item, which is ADEQ updates.

09:07

9 We'll just hold one second. We have another
 10 member that's joining us. Joe Mikitish.

11 MR. MIKITISH: Good morning. Sorry I'm running
 12 late.

13 CHAIRPERSON CLEMENT: No problem. For the
 14 record, Mr. Joseph Mikitish is joining us.

09:07

15 Okay. Now we'll go back to -- we've gone through
 16 approval of meeting minutes, and we're on Agenda Item No.
 17 3, ADEQ updates with Mr. Fulton.

09:07

18 MR. FULTON: Thank you. As a routine, look at
 19 the color charts here in your handout, State Assurance
 20 Fund July '09. Then we tracked the claims received and
 21 interim determinations made over a trend of time. We
 22 haven't seen a huge number difference in claims received.
 23 It jumps up and down depending, but it's not spiking out
 24 in any unusual way. And we're still making determinations

09:08

25 within 90 days and paying claims within 90 days.

1 So, the second chart, it shows the pie chart
 2 here, the Policy Commission pie chart, Corrective Action,
 3 again showing our closure rates sitting around about the
 4 8th this last month. We're really focusing on trying to
 09:08 5 get those that are closeable closed. I know that so are
 6 working parties, so that's both sites we're doing under
 7 State Lead and also Other Corrective Actions.

8 Just a note here on the second table down,
 9 Corrective Action documents pending review. We talked a
 09:09 10 little bit last month about SAF approval of work plans.
 11 Those had to begin by June 30th, so we had a bit of a
 12 spike there in June of 16 preapproval work plans came in.
 13 The one showing in July, that doesn't mean we received one
 14 in July. That means we still have one that we're working
 09:09 15 to improve.

16 CHAIRPERSON CLEMENT: I have a question on this.
 17 One of the things that this doesn't show us is how long
 18 these documents have been in process, or is there a way to
 19 interpret that from this?

09:09 20 MR. FULTON: Well, that's what I'm looking to
 21 track as well.

22 And, Joe, you want to speak to that?

23 MR. DROSENDAHL: Yeah. Basically we're setting a
 24 goal of getting those reviews out within 30 days. There
 09:09 25 really is no statutory time frame for reviewing those

1 documents, except for the 120-day time frame that's a part
2 of the informal appeal process. After 120 days people,
3 can informally appeal that we haven't responded.

09:10 4 But we were shooting for 60, but we've kind of
5 lowered that to a 30-day time frame. As Mike says, we're
6 definitely going to be tracking, you know, more closely,
7 you know, where those reviews are because the State
8 Assurance Fund is going away, so it's more important to
9 get these reviews out as soon as possible.

09:10 10 CHAIRPERSON CLEMENT: And I'm not -- I know Mr.
11 Bunch had sent me an e-mail, and he's not here to
12 represent the issue, so I'm going to just say what I
13 understood him to want me to ask. So, I apologize if I'm
14 not, to the audience and to the Commission.

09:10 15 But he had received some information that some of
16 the site reviews were taking an inordinate amount of time,
17 and there was some concern in the regulated community
18 about timely reviews by the Agency.

09:11 19 So, do you have any long particular review times
20 for certain types of sites or for, you know, any lagging
21 ones, like sometimes the more complex site might take
22 longer to review, or are you keeping everything within the
23 approximate 60-day time frame?

09:11 24 MR. DROSESND AHL: Yeah, we're trying to get the
25 60-day time frame. Right off the top of my head, I don't

1 know of any that have been over 120 days or even over 60,
2 but that doesn't mean that there isn't. And, you know, if
3 people have reports or requests in for our input or our
4 review that are, you know, past 60 days, definitely let me
09:11 5 know, or even past 30 days.

6 MR. FULTON: I've been looking to make sure that
7 we don't have longstanding review cycles that aren't
8 explainable, either because we don't have the information
9 or whatever, but it has been the focus of mine, my door is
09:12 10 always open. If someone has a question, I've been getting
11 some calls from people saying where is this thing, and I
12 can help them along, but that's been an emphasize as the
13 window closes to get these things turned around.

14 MS. KALAGHAN: Is this a statistic that we could
09:12 15 add to this sheet? I know that I have been receiving some
16 inquiries also from the regulated community regarding the
17 length of time it's taking to get closure requests
18 reviewed, so I've been hearing the same thing.

19 MR. FULTON: Do you think this is a question
09:12 20 because of the closing window or because it's been a
21 longstanding problem or in someone's view. What do you
22 think?

23 MS. KALAGHAN: I can't really say.

24 CHAIRPERSON CLEMENT: I don't have any
09:12 25 information regarding that. My sense is people are

1 getting concerned because they need to have the documents
2 reviewed so they can implement the work and get funding in
3 the appropriate period of time or get closure so they know
4 whether they are going to have to expend additional funds.

09:13 5 That's my sense of it, but I don't have specific
6 knowledge. But I would like to echo what Theresa, Ms.
7 Kalaghan just said, is there a chance as we end, as we get
8 closer to the SAF ending paybacks, that we can add that
9 statistic here just like we do the SAF?

09:13 10 MR. FULTON: We could.

11 CHAIRPERSON CLEMENT: Okay.

12 MR. FULTON: Joe will work on that.

13 CHAIRPERSON CLEMENT: I mean, I don't want to
14 make more work for the Agency at a time when it's more
09:13 15 important for you to focus on those documents, but if you
16 are already tracking them internally, and then so that's
17 one solution that will be helpful.

18 And then the second one would be, I heard very
19 clearly this year that if there is a particular site or
09:13 20 particular case, that the Agency has an open door, open
21 telephone policy, and that either and/or Mr. Drosendahl or
22 Mr. Fulton would be very willing to take those calls and
23 to do the research and to make sure that those reviews are
24 done in a timely manner.

09:14 25 So, I think that should hopefully, you know, move

1 things forward appropriately.

2 Okay. Thank you.

3 MR. FULTON: Also shown on this table is the
4 MTCP, which has been suspended for the last four cycles
09:14 5 here. We're working to get those projects back on line.
6 I will talk a bit about budget in a minute, but we're
7 having to just proceed with some caution given what we
8 know about the budget as it exists in the proposed bill
9 and move ahead, so we're doing so under the MTCP.

09:14 10 We had suspended that activity last year, and try
11 to give us some flexibility to the forward year, make sure
12 we got a handle on what the budget impacts for '10 would
13 be. We've decided we're going to go ahead and implement a
14 few more of those MTCP projects, along with, as I reported
09:15 15 last time, the stimulus money that we got. We got \$3.2
16 million in stimulus money that we're putting in for
17 cleaning up mostly orphan sites that were in our State
18 Lead program.

19 Plus, we're getting -- we're re-engaging our
09:15 20 State Lead program to some degree, putting another couple
21 of million dollars towards that this year. So, between
22 that and the stimulus money, we should be getting back
23 close to where we had been operating in the State Lead
24 program in the beginning of FY '08.

09:16 25 MS. CHABERSKI: Are you excepting stimulus money

1 for the State Lead program?

2 MR. FULTON: On a very choosy basis. There are
 3 -- obviously there are folks that might come in and get a
 4 financial hardship settlement. We're required to
 09:16 5 entertain those offers and accept them if they meet the
 6 criteria, but there can't be a guaranty now at the site
 7 just because it was part of the financial hardship
 8 settlements, but it comes into State Lead and gets cleaned
 9 up right away.

09:16 10 MS. CHABERSKI: There are no plans to suspend
 11 either the municipal or State Lead, it's just a matter of
 12 using your money and prioritize things; is that the status
 13 right now?

14 MR. FULTON: Yes. It's just proceed with caution
 09:16 15 is what we're doing. And with regard to the MTCP, that
 16 fund is a finite fund. It doesn't have a regular income
 17 to it, other than the tiny bit of interest income that it
 18 earns. I think it's sitting around a half million dollars
 19 this year. It was funded once through the legislature,
 09:17 20 and I don't believe it's been funded again, so that's a
 21 program that has a finite life unless more money comes
 22 into that program. But through State Lead and other
 23 federal grants, we have some ability to advance the goals
 24 of the MTCP through other ways.

09:17 25 CHAIRPERSON CLEMENT: I have a follow-up

1 question. When you talk about that, that you could have a
2 financial hardship case, this is how the program
3 originally started, and then you could have a settlement,
4 but it may not get into a cleanup mode in a State Lead
09:17 5 process because it may not rank high enough from an
6 environmental public health perspective, is that how you
7 do that?

8 MR. FULTON: That's what I've been looking
9 toward. There are other considerations, obviously, but if
09:18 10 there's a site that requires immediate attention because
11 of contaminants or pathways of concern, it's something we
12 will consider in terms of maybe moving it up in
13 priorities. It's not a real formal process. We don't
14 have a huge number of sites.

09:18 15 But I guess the point I was trying to make is
16 just because the site might be eligible for State Lead
17 doesn't mean it's going to be brought into State Lead and
18 worked on right away. It's the same -- the analog is the
19 WQARF program. There is plenty of WQARF eligible sites.
09:18 20 There is only so much money. And I'm trying to create the
21 -- I'm trying not to create unrealistic expectations by
22 bringing a lot of sites into State Lead even if they are
23 eligible because it just creates a backlog.

24 CHAIRPERSON CLEMENT: So, there is a catch 22
09:18 25 here for the small -- for a financial hardship site that

1 has a settlement but can't make it into the State Lead,
2 then that site just doesn't get addressed because legally
3 the owner and operator then would not be required to do
4 anything if they reached a settlement; correct?

09:19 5 MR. FULTON: Correct. The goal of the settlement
6 would be met, which is to resolve the liability, but it
7 doesn't necessarily guarantee a site to be cleaned up.

8 So, in our world of finite resources, we're
9 having to meter it out in a way that we don't get
09:19 10 overextended and try to work on too many sites at once
11 with too little money.

12 CHAIRPERSON CLEMENT: But if one of the sites
13 proposed is significant, environmentally a public health
14 risk, obviously, I don't want to answer for you, but it
09:19 15 seems to me that you prioritize that to be addressed;
16 right?

17 MR. FULTON: Correct. We can readjust our
18 priorities. As our budget gets smaller, we get a little
19 less nimble, but we have some room.

09:20 20 I didn't create any handouts for you, but on our
21 website we do have our stimulus -- our stimulus
22 information on the website, the DEQ website. I remind you
23 that we got \$3.219 million through the EPA through the
24 form of a LUST trust grant under the ARRA stimulus
09:20 25 program, and we identified 23, what would have been

1 formerly state funded State Lead projects that we're
2 moving ahead with, and that is full speed ahead, thanks in
3 part mostly due to efforts by Ron and Joe and the State
4 Lead folks, Mike Latin and his group, to get projects
09:20 5 underway.

6 As of today, about half of the sites that we have
7 on that list are under contract, and about, I would say,
8 fully a third of those 23 sites, there's already field
9 work going on to advance the investigation cleanup of the
09:21 10 sites. So that's all since we got the money in June.

11 MR. KERN: In July.

12 MR. FULTON: In July.

13 CHAIRPERSON CLEMENT: Congratulations. That's
14 very rapid.

09:21 15 MR. FULTON: So we're moving very quickly.
16 Thankfully the Federal Government took their time to give
17 us the money so we had plenty of time to plan for it, and
18 that's again credit to Ron and Joe getting that contract
19 in place.

09:21 20 State Lead was already a pretty well oiled
21 machine, and this fits right in with that, so we're
22 fortunate that way. What this will mean, I believe, and
23 we're well ahead of our goals, but the grant obligations
24 to obligate money, I have to have Ron remind me what our
09:22 25 obligation requirement is under the grant.

1 MR. KERN: Ron Kern. We're supposed to, under
2 the grant, have 35 percent obligated, encumbered, if you
3 will, nine months after the award date, so the award date
4 was July 15th, so April 15th of 2010, they're supposed to
09:22 5 have 35 percent obligated and 15 percent expended.

6 MR. FULTON: We already have almost 60 percent
7 obligated, I believe, and we haven't incurred any
8 expenditures yet because the work hasn't incurred and been
9 billed back, but I don't think we're going to have trouble
09:22 10 meeting that expenditure obligation either.

11 What it will do is position us pretty well for
12 getting more money if money becomes available, or, as EPA
13 has pointed out, they're going to go through a
14 reprogramming step looking at monies that have been
09:23 15 awarded to states around the country, seeing who is able
16 to spend the money as they said they were. Those that
17 aren't might have some of the money taken away and given
18 to those that can. So I think we're going to be in a good
19 position to argue for some more of that money if it comes
09:23 20 out.

21 CHAIRPERSON CLEMENT: Excellent.

22 Ms. Gaylord.

23 MS. GAYLORD: Is it possible that we could see a
24 list of sites that you are going to be working on with the
09:23 25 money?

1 MR. FULTON: Yeah, it's on the website. If you
2 go onto the DEQ website, there is a button on the right
3 that says stimulus, ADEQ stimulus, and that will walk you
4 into the money that came to tank programs, also take you
09:23 5 to the money with the sites and others in the Department.
6 But I could send you a link.

7 MS. GAYLORD: I can get one.

8 MR. FULTON: That's really my update report.

9 CHAIRPERSON CLEMENT: Any other questions on any
09:24 10 of these materials from Mr. Fulton?

11 Okay. Great.

12 MS. CHABERSKI: I do have one question.

13 CHAIRPERSON CLEMENT: Yes.

14 MS. CHABERSKI: Do you know at all if there is
09:24 15 any more stimulus money slated, essentially, or is it just
16 a wait and see? I know you got your first amount for the
17 Agency. Is there more coming that you know of or are
18 there like tiers of money?

19 MR. FULTON: I've heard whispers of another
09:24 20 stimulus package. I don't know if that's true. But as
21 far as I know, we've received what we are going to receive
22 under this stimulus package that exists today.

23 MS. CHABERSKI: Okay.

24 MR. FULTON: The new money I talked of was
09:24 25 reprogramming money. If the states that received money

1 just as we did under this first wave of money aren't able
2 to spend it, it might be reprogrammed to EPA and
3 redistributed.

09:25 4 MS. CHABERSKI: I heard the same thing and I just
5 wondered if you have heard anything.

6 MR. FULTON: I haven't.

7 CHAIRPERSON CLEMENT: Thank you. I think we will
8 just move on with Mr. Fulton's SAF status.

09:25 9 MR. FULTON: All right. In your packet, you will
10 see, we move on to FY 10 for our State Assurance Fund
11 status. After reconciliation of '09, these are the
12 numbers that we have and our projections for translating
13 from '08 to '09.

09:25 14 I just noticed now, we need to get a new
15 beginning balance date on there. I apologize for that.
16 It not July 1. It will be -- well, it would be July 1.
17 What am I thinking. I'm sorry. That's correct.

09:26 18 But this is after reconciliation of our 13th
19 month, after all the pipeline invoices come in. For
20 comparison, I think what we had been projecting at the end
21 of our last update, the ending balance was about -- which
22 would become the beginning balance for '10, was about 15
23 and a half. We ended up with almost 20. It seems a
24 little off, doesn't it. But that's our reconciliation of
09:26 25 our whole batch for invoices that come in late, and some

1 transfers that were dealt with differently than what we
2 thought they were going to be dealt with in '09.

3 So, it's kind of a vague explanation, but we
4 ended up with a larger beginning balance than we thought
09:26 5 we were going to, which was good news.

6 Walking down through that sheet, nineteen-nine is
7 our beginning. We are estimating again about 28.8 million
8 income this next year.

9 Last year -- last fiscal year I think it was more
09:27 10 like 29 and a half, so our projection is it's going to go
11 down a little bit.

12 Our expenditures, we're holding about the same,
13 right around 30 million. Here's the important number
14 that's still up in the air, it's Footnote No. 2.
09:27 15 Estimated transfers from '10 is 15.215. That's what
16 appears in House Bill 2643, which is still sitting waiting
17 decision by the Governor. That's a transfer shown from
18 UST funds. And I'll remind you now that most of the sub
19 funds of the UST funds have been pretty much zeroed out.
09:28 20 This money derives from the State Assurance Fund almost
21 entirely.

22 So, from that 28, 15 will probably come in
23 transfers. What we're doing right now is discussing the
24 timing of those transfers to avoid a cash flow problem.
09:28 25 We're still -- the biggest objective is to avoid having to

1 rank claims. I say, we're not ranking claims, put an eye
2 on that, but we have to talk about the cash flows from the
3 transfers that are going to occur.

4 Obviously the budget office of the legislature in
09:28 5 the Governor's Office would like it all at once, but this
6 Department is talking about this fund and many others in a
7 way that we can transfer money just in a way that doesn't
8 completely shut down the program.

9 So we worked out a way to transfer some money on
09:28 10 a quarterly basis. That's our proposal. I don't have the
11 final numbers yet, but -- or whether that's going to be
12 acceptable -- I think it will be -- to transfer this 15.2
13 in installments. And since we earn money as we go, this
14 program is a little better set to deal with that kind of
09:29 15 cash flow issue because we're still bringing in about two
16 and a half million dollars a month through the tax.

17 So, in the end, that results in our guesstimate
18 of about 3.9 million at the end, which is a little closer
19 than I would prefer to cut. We would like to have 60 to
09:29 20 90 days money on hand would be good, but it's not zero.
21 It's a little more than zero. I think what's happened,
22 again, we are looking at these transfers to make sure that
23 we have a reasonably solvent program.

24 CHAIRPERSON CLEMENT: You know, looking at these
09:30 25 numbers, it looks like you have a robust amount of money

1 with your end of year, almost 20 million, which is
2 unexpected, I think. What's your cash flow out now
3 average per month?

09:30 4 MR. FULTON: Our annualized -- our claims were
5 about 16 million a year, and, you know, I will have to
6 look at our admin side. It's about -- it's going to be in
7 the \$400,000 range a month. So, we're probably looking at
8 a little less, about 2 million a month I would think, but
9 I could do that for you and get a number solid.

09:30 10 CHAIRPERSON CLEMENT: And that would -- then you
11 could anticipate?

12 MR. FULTON: Right. What we try to do is build
13 in a little extra into our projections because we have
14 some variation of claims. We have some big claims that we
09:31 15 know are coming in, so we're forecasting that forward.
16 Tara knows with some certainty what is in-house, and we
17 know from talking to people on the street what's coming,
18 and that information we pass on to our budget analyst who
19 helps us develop our projections so that we have a little
09:31 20 time to react, but I deal with it in the same month.

21 CHAIRPERSON CLEMENT: Are you anticipating
22 through the end of this year, a calendar year, some fairly
23 substantive claims, then, coming in more than normal?

24 MR. FULTON: I know we have -- I know of one that
09:31 25 we have from the City of Mesa, which is in the million

1 dollar range. But that's what Tara keeps an eye on. I
2 think what's happened is, remember, there is no statute of
3 limitations on claims here. We get -- the reason the
4 city's is so large, they haven't submitted a claim for
09:32 5 work in years, so they've been carrying this on their
6 books and they have a certain amount of money, that
7 they're finding invoices from, you know, 2004, so that's
8 another unknown to this program. We think the motivation
9 is fine for people to get their bills in, so most of the
09:32 10 people are probably current. There are some of those that
11 are out there.

12 CHAIRPERSON CLEMENT: For the record, we're
13 replacing -- Tamara Huddleston has joined us for Joseph
14 Mikitish -- thank you -- representatives of the Attorney
09:32 15 General's Office.

16 Thanks, Joe. Okay.

17 MR. FULTON: That's all I had for the SAF status.

18 CHAIRPERSON CLEMENT: Did everybody get copies of
19 this because my package was missing it so just -- are
09:33 20 there extras back there?

21 MR. FULTON: Yes, there are.

22 CHAIRPERSON CLEMENT: Okay. Ready for the next?

23 MR. FULTON: Yes.

24 CHAIRPERSON CLEMENT: This is the discussion of
09:33 25 the September 1st, 2009 UST Assurance Account SAF

1 liabilities report. Mr. Fulton, please.

2 MR. FULTON: With your permission, I would like
3 to combine topics No. 5 and 7 --

4 CHAIRPERSON CLEMENT: Perfect.

09:33 5 MR. FULTON: -- because Mr. Bunch isn't here. I
6 was at the subcommittee meeting, and this report was the
7 only topic discussed at that meeting, so I kind of
8 combined those. Is that okay?

9 CHAIRPERSON CLEMENT: That's great. For the
09:33 10 record, topic seven is the Evaluation Subcommittee update,
11 and the primary topic is the August 20th, 2009
12 subcommittee meeting that was held with Mr. Bunch, and Mr.
13 Bunch had an emergency this morning and was not able to
14 join us, so we are going to combine 5 and 7.

09:34 15 MR. FULTON: Okay. And my report on this is
16 going to sound a lot like it did last month, as I told you
17 before, which is, we've drafted a report and it's still
18 being reviewed. It hasn't -- It's having trouble getting
19 the attention I think I might like it to have because of
09:34 20 all the other budget discussions ongoing. But my story is
21 still the same, that our -- the report is essentially a
22 walk-through and a narrative of the State Assurance Fund
23 analysis that we passed out at several meetings, and in
24 the packets. You can see this ADEQ State Assurance Fund
09:35 25 analysis dated February 16, 2009 with updated numbers.

1 This is essentially an outline of what the September 1,
2 2009 report will be, at least as it exists today.

3 And just for the record, I will read in the
4 session law for Senate Bill 1306, which is what we call
09:35 5 the sunset legislation. It requires the Department by
6 September 1, '09 to prepare and submit a report regarding
7 the anticipated financial liability of the UST Assurance
8 Account based on applications for payments submitted to
9 the Department by June 30, '09.

09:35 10 So, I think this meets the mission of the report,
11 and the report is going to essentially walk -- this walks
12 down through this, and largely the conclusion is that,
13 though these numbers are going to be updated to meet --
14 this is the February 16 report, we're going to have more
09:36 15 updated numbers. The numbers are not that different
16 today. We are guessing the amount available for transfer
17 to a Regulated Substance Fund as described in 1306 is
18 going to be significantly less than 60 million. Be around
19 12.

09:36 20 Now, at the Evaluation Subcommittee meeting, I
21 went through this very same thing. The conversation
22 turned, on Mr. Bunch's direction, to discussions of what
23 if, what now, so this report comes out that might suggest
24 that we're going to not have 60 million under the current
09:37 25 sunset provisions, 1306, what does that mean, what doesn't

1 happen, what if anything does the technical -- the
2 Evaluation Subcommittee or the Policy Commission want to
3 do with that information. That's where the conversation
4 went.

09:37 5 It was pretty much an open discussion of the what
6 ifs, and I think we've -- questions were asked, do we have
7 an ability to -- does the Department have an ability to
8 really actively describe in money terms the future
9 obligations that might be out there after sunset of the
09:37 10 Fund. And the answer is, yes, we do. It's an imperfect
11 estimate for a lot of reasons, that we could come up with
12 more updated estimates, but I think we have pretty good
13 estimates based on the information that we have and those
14 are presented here in this analysis.

09:38 15 And the other point discussed was should -- and I
16 won't -- there were other participants. I won't really
17 speak out of turn, but other participants in the meeting
18 were speaking of the possibility of legislation to extend
19 the Fund, unsunset the Fund. I'm not -- I won't put words
09:38 20 in people's mouth on that.

21 But the Department in that situation is always --
22 it's going to be available for providing information for
23 sure. I was asked if we had a legislative proposal in
24 mind, and we do not. But, I fully anticipate during the
09:39 25 next session there's going to be one or more proposals

1 that come up to talk about the State Assurance Fund, the
2 sunset provisions that were in 1306, and what if anything
3 might need to be done, and we will participate in those
4 discussions for sure.

09:39 5 CHAIRPERSON CLEMENT: Does the Department have a
6 position formally on extending the Fund?

7 MR. FULTON: No.

8 CHAIRPERSON CLEMENT: Does the Department intend
9 to have a position?

09:39 10 MR. FULTON: That's the question about the
11 future.

12 CHAIRPERSON CLEMENT: So, you don't know?

13 MR. FULTON: I do not know. Certainly a
14 possibility, but I would -- I can't really speak with any
09:39 15 real information on that, so...

16 CHAIRPERSON CLEMENT: Does the Department have a
17 concern that it may, and it appears to be very clearly,
18 will have an unfunded mandate?

19 MR. FULTON: My concern as a program manager is
09:40 20 just that, is that my job is to take what we've been
21 given, the statute rule, talked about the resources we
22 have to implement. I'm concerned that we may not have
23 enough money to realize what was actually intended in
24 1306.

09:40 25 The \$60 million, I wasn't around to talk about

1 how that amount was arrived at to be sufficient to carry
2 on future activities beyond sunset. My understanding,
3 though, is it was based on some known conditions of how
4 many kinds of releases could be within the various
09:40 5 programs set up by 1306, the MNA program, orphan sites,
6 plus a cushion there to deal with uncertainty, sites that
7 might need to get reopened that had been closed and now an
8 owner/operator is no longer around. That 60 million was
9 based on known and then some cushion for unknown.

09:41 10 CHAIRPERSON CLEMENT: Does that 60 million
11 include these hardship settlements and clean up of those
12 sites?

13 MR. FULTON: I don't think so in a quantitative
14 way. That's also an unknown number. How many -- how many
09:41 15 sites -- how many facilities might choose to pursue a
16 financial hardship. We are keeping our eye on that number
17 too as the Fund comes down to a sunset. Who knows, it
18 might have been able to afford a ten percent co-pay, might
19 not necessarily be able to afford a hundred percent of the
09:41 20 load, which is what's going to happen once the Fund
21 terminates.

22 MS. GAYLORD: Before the economy went down,
23 brownfields were really building up a lot of enthusiasm
24 with a lot of projects underway. I think that will resume
09:42 25 once the economy gets back on its feet. And that's where

1 you find these orphan sites. Every brownfield development
2 my clients have done, they've found an orphan site, and in
3 some cases the project's big enough and there is enough
4 money that they take care of it. And there are going to
09:42 5 be other cases where they're going to look to the
6 Department to try to take the orphan tank problem into
7 State Lead, and those are the kinds of issues that we
8 wanted to make sure the Department had funds to cover.

9 The other concern that I've had is the extent
09:42 10 you've got sites that are accepted in the MNA program, or
11 whatever terminology you are using for those kinds of
12 approvals or closures, those sites, what Phil McNeely had
13 assured water providers was that there would not be a risk
14 that the water provider would end up with the burden of
09:42 15 additional cleanup. What Phil McNeely had talked about
16 was the fact that this fund would be there as a safety net
17 in case down the road the release turned out to be a
18 problem with the water supply, the Department would be
19 there.

09:43 20 So, those are issues, and I guess what it comes
21 down to is what role the Policy Commission needs to play
22 in informing the legislature either now or later about the
23 consequences of insufficient funding at the end of the
24 day.

09:43 25 MR. FULTON: The report that is drafted now isn't

1 silent to that point. It's not extremely detailed, but we
2 do talk about what -- it may not happen, part of that you
3 just touched on. You realize the UST program is in some
4 way a big brownfields program. We do through State Lead
09:44 5 bring up orphan sites through MTCP. Those are all
6 brownfield-like programs that help prepare or make sites
7 ready for redevelopment.

8 So that's definitely one of those things that we
9 got our eye on. If there is not sufficient funding around
09:44 10 that some of those projects might slow or be eliminated.
11 So that's -- there is a little bit of discussion in the
12 report about what may not happen.

13 So, Gail, back to your original point. Yeah, I'm
14 concerned about unfunded requirements, and 60 million at
09:44 15 the time it was arrived at I think was a comfortable
16 number to account for what was known, plus some padding,
17 some assurance for some of the uncertainties, large enough
18 to carry us through what we need to do, what we knew.

19 CHAIRPERSON CLEMENT: One of the things that we
09:45 20 were hoping came out of the Evaluation Subcommittee was a
21 recommendation for the full Commission, and we also were
22 hoping, and this is through no fault of anyone's, but to
23 have a draft in view of the report before it was issued
24 prior or at this meeting, and obviously that is not
09:45 25 available.

1 So, you know, I'm just opening this up for
2 discussion to the Commission. You know, we have a sense
3 of what we would like to potentially say in addition to
4 what might be in the report, but without the report, I'm
09:45 5 at a little bit of a loss to propose a particular course
6 of action at this point in time in terms of a
7 recommendation to the legislature or an add-on to the
8 Governor regarding the report with a copy to the
9 legislature.

09:45 10 I don't know how the rest of you feel about that.

11 MS. CHABERSKI: Can I just ask a question?

12 CHAIRPERSON CLEMENT: Sure.

13 MS. CHABERSKI: A process question. So this
14 report goes to the legislature on September 1. Can you
09:46 15 speak to like the process? Will they respond back and is
16 that an opportunity for us to know their response, what
17 the Commission wants to support or write, or does it just
18 kind of go out there and you hear when you hear it?

19 MR. FULTON: The report goes to the Governor and
09:46 20 the legislature, the president of the house, the president
21 of the senate, and the speaker of the house. You may not
22 get any feedback. It's an informational report, so it
23 might be one of those things that's best followed up with
24 a close-in-time communication.

09:46 25 And to your point, Gail, Bill did mention this at

1 the subcommittee meeting, that he observed the same thing
2 you did, without the report, there is not much we can talk
3 to specifically. We can start thinking about what fixes
4 there might be in store, but he was suggesting that
09:47 5 another business day on the subcommittee agenda for when
6 the report was made public, look at it and have another
7 subcommittee meeting in the future to discuss specifics.

8 But sometimes there's inquiries that come out of
9 submitting reports to the legislature. If a legislator
09:47 10 reads the report, sometimes questions will come from it.
11 And this report is nice and compacted, and so it might be
12 read. That was my other goal was to try to keep it from
13 getting too detailed so it would be read. We might get
14 some questions come out of it.

09:47 15 CHAIRPERSON CLEMENT: Any other discussion,
16 comments?

17 I think that what we're hearing, and again no
18 attempt to make fault here, but we don't have a report to
19 comment on. I think it would be premature for us to
09:48 20 propose a letter of comment or a letter of clarification,
21 whatever we would want to call it. But I do think at some
22 point in time it's important for the Governor and the
23 legislature to hear from the Commission regarding what I
24 think we all share or most of us anyway share a concern
09:48 25 about unfunded tasks that are incomplete, that either

1 through the regulated community's expectations, water
2 providers' expectations, future development expectations,
3 because we've had a financial situation in the state that
4 required legislature to withdraw funds that were dedicated
09:48 5 for that purpose.

6 So, you know, I don't think we would as a
7 Commission want to leave this without comment, but I don't
8 think also that we're at a position to provide comment
9 without the report.

09:49 10 Since it's a legislative mandate and the
11 Governor's Office -- is it in review in the Governor's
12 Office?

13 MR. FULTON: It's in review, yeah.

14 CHAIRPERSON CLEMENT: Okay. So, do you
09:49 15 anticipate that it will be available by September 1st?

16 MR. FULTON: It must be.

17 CHAIRPERSON CLEMENT: Okay.

18 MR. FULTON: Yeah.

19 CHAIRPERSON CLEMENT: So someone will have
09:49 20 released it by then.

21 MR. FULTON: I will repeat, my goal was to do
22 just what you asked, was to have a draft in advance of its
23 issuance. I just wasn't able to get that, so I apologize.

24 CHAIRPERSON CLEMENT: I understand. So, what my
09:49 25 suggestion would be, since Mr. Bunch is not here, but my

1 suggestion is that we continue to assign this issue to the
2 Evaluation Subcommittee, but that in our own roles as
3 representatives of various portions of the regulated
4 community or the public or the environmental groups, to
09:49 5 formulate in our own minds and through our own contacts
6 those issues which we would want to include in a letter,
7 because I think, for example, Mr. Findley, you know, I
8 think this might be a real issue that the environmental
9 community would want to comment on, because if there are
09:50 10 sites that require cleanup, and that basically we have a
11 black hole for funding, I think that might be appropriate.

12 Obviously, Ms. Gaylord has a number of issues. I
13 as a representative of the people, I have a number of
14 issues. I really do not want to see, you know, a catch 22
09:50 15 for small and financially hardship sites. I really,
16 really -- because that was the whole purpose. Helping
17 having drafted that legislation in 1987, that was the
18 primary purpose of the fund, and so, you know, that would
19 be, I think, abysmal if we got to the point where those
09:50 20 sites -- all these millions of dollars have been spent and
21 all of these sites remain in a black hole. .

22 So, I have two suggestions, that we each in our
23 own spectrum of responsibility for the Commission, you
24 know, gather information in preparation for a very
09:51 25 substantive letter that will very briefly but

1 substantively comment on a very brief but important report
2 to the legislature.

3 And then, secondly, that we assign to Mr. Bunch a
4 continued evaluation of this in the Evaluation
09:51 5 Subcommittee, and I'll -- and it would be appropriate that
6 I speak with Mr. Bunch after this meeting because he was
7 not able to attend, and just, you know, inform him that we
8 do want him to continue this process.

9 Do we need a vote on that, to ask him to continue
09:51 10 what we've already assigned him to do? I don't think so.
11 Okay.

12 MR. FULTON: I don't have my notes in front of
13 me, unfortunately, but I don't believe he proposed another
14 date yet, but he may have.

09:52 15 Joe, do you recall?

16 MR. DROSENDAHL: I do not recall, no.

17 MR. FULTON: But this is on his radar. He wanted
18 to have another meeting, so it won't be a surprise to him
19 at all.

09:52 20 CHAIRPERSON CLEMENT: Okay. Good. Any other
21 comments?

22 Okay. Thank you. Okay. Are we done with you?
23 I think we're done with you. No, not quite.

24 MR. FULTON: Item number --

09:52 25 CHAIRPERSON CLEMENT: Six.

1 MR. FULTON: -- six.

2 CHAIRPERSON CLEMENT: Recent legislation and
3 rules affecting the UST program.

4 MR. FULTON: Recent legislation has all been
09:52 5 about budget. My update was, if you want more details you
6 could look at House Bill 2643. That's one of the budget
7 bills that describes in particular the UST transfers,
8 among many, many others. So, if you are really curious,
9 you can look that up on the legislator's website.

09:53 10 MR. FINDLEY: What was the number again?

11 MR. FULTON: 2643 is the House Bill, 2643.

12 Rules, still in a holding pattern. The rules,
13 though we're being asked from time to time as the
14 Department to re-prioritize our wishes for rule
09:53 15 development, and as understanding of the rules that
16 they're in the menu for each department. Really, all we
17 have on the plate and we have had for a while is our
18 operator training rules. That would be to fully implement
19 the Energy Policy Act requirements.

09:53 20 Am I speaking correctly, Ron?

21 MR. KERN: No. That's correct.

22 MR. FULTON: That is correct. So, those are
23 still on our menu. They're not the highest priority for
24 the Department, but we'd like to get those in place well
09:54 25 in advance of the 2012 implementation time frame. We'd

1 like to give the operators plenty of time to get in line
2 with the requirements before 2012. It sounds like a long
3 time away, but it's not.

4 CHAIRPERSON CLEMENT: It's not.

09:54 5 MR. FULTON: So, we're going to keep at that, try
6 to get that on the agenda. Meanwhile, we still work with
7 other organizations who are developing training and
8 looking at other states, what they're doing. Maybe when
9 it's time for us to step out to a broader stakeholder
09:54 10 process, we'll have some other examples to look at and
11 make it not all that surprising. That's our goal.

12 CHAIRPERSON CLEMENT: Okay.

13 MR. FULTON: That's all I have for that.

14 CHAIRPERSON CLEMENT: Okay. Jump to the next
09:54 15 item, which is the Technical Subcommittee update, and we
16 have -- I had received from Mr. Bunch a second comment,
17 and, again, it's unfortunate he's not here to represent
18 it. But regarding the Tier 2 screening process for
19 determining whether a site can be closed based on a risk
09:55 20 assessment approach versus an actual cleanup, and I did
21 e-mail that comment to the subcommittee co-chairs, and so
22 I'm wondering if either Ms. Kalaghan or -- have you heard
23 any other information regarding it?

24 MS. KALAGHAN: I have not.

09:55 25 MS. CHABERSKI: And I have not.

1 CHAIRPERSON CLEMENT: And just for some
2 background, Mr. Fulton, this was -- the Tier 2 screening
3 process was a very difficult and sore subject for many
4 among here because it took a very long period of time to
09:56 5 actualize, and there was a great deal of confusion during
6 that process.

7 And it was my understanding that we were in a
8 steady state mode at this point in time relative to that
9 process, that it had been decided upon, there was software
09:56 10 developed, everybody had access to that software, and we
11 with knew where we were going and there was no more
12 controversy.

13 And I did receive a comment from Mr. Bunch which
14 is why this was added to the agenda at his request, that
09:56 15 that process has changed in some manner, and that perhaps
16 it would be a fruitful discussion to reevaluate through
17 the Technical Subcommittee. That's the background of the
18 information that I have.

19 And so I know that this is a new agenda item for
09:56 20 you and that you're not particularly prepared to discuss,
21 but could we ask factually, is the process the same
22 process that was decided upon and being used in the past?

23 MR. FULTON: Having almost no familiarity with
24 this question, I'd like to see what that question is, but
09:57 25 I have not been made aware of any process change. I'm

1 going to speculate here for a second, that as the fund
2 comes to a close, we're getting more and more risk-based
3 closure requests. So maybe people's understanding of
4 exercising the process is happening more, so their
09:57 5 understanding of that process is getting more widely known
6 and some questions may be coming because of that.

7 But in any case, if we want to talk about this in
8 a subcommittee, we would be glad to come and talk about
9 what the process is. And the same invitation stays out
09:57 10 there for any person out there trying to close a site, if
11 you have a question, I always answer my phone. Joe always
12 answers his phone. So that's another avenue available to
13 this Department for a party who wants to close a site
14 anytime.

09:58 15 But, we will come to the subcommittee meeting
16 whenever it's scheduled and talk about what our Tier 2
17 process is.

18 CHAIRPERSON CLEMENT: Yes.

19 MS. CHABERSKI: I don't have a problem holding a
09:58 20 subcommittee meeting, but, really, many times we don't
21 have a whole lot of people coming for the issue. I'm not
22 sure if this is an issue with -- I don't know the
23 background on the issue, but if it's a question for
24 someone who is unfamiliar, I mean, we can verify the
09:58 25 process hasn't changed.

1 But, you may have a good point, that maybe people
2 are starting to use that system that are not familiar. Is
3 there anything on your web that explains -- and I'm trying
4 to see, how do you get the word out to the most people.

09:58 5 If it's holding a subcommittee meeting, I'm not sure
6 that's the best way, because we may not have a big
7 turnout.

8 But is there anything on your web as a reminder
9 to talk about the process, or is there any information on
09:59 10 there that people can use to guide them through the
11 process that we're anticipating more people using it that
12 maybe have not used it in the past?

13 CHAIRPERSON CLEMENT: Mr. Drosendahl.

14 MR. DROSENDAHL: This is Joe Drosendahl, the
09:59 15 Corrective Action Section manager.

16 Yes, there is material on the website that talks
17 about the Tier 2 software and how to use it. It may not
18 go as far as it needs to be. I have previously just
19 recently talked to Jeanene Hanley, who is our risk
09:59 20 assessor, that we need to maybe start developing
21 additional guides, or whatever is needed, because, yeah,
22 with the fund coming to a close, we are seeing more people
23 interested in risk, either them performing it or them, you
24 know, requesting that the Department look at their data to
09:59 25 do the Tier 2 in-house, so...

1 MS. CHABERSKI: And other than the web, and I
2 don't want to create more work, if there's a big demand
3 coming in, you know, you can kind of feel that, is it
4 worth doing a two-hour workshop, or something like that,
10:00 5 for folks? It's just something to think about.

6 MR. DROSENDAHL: That's a possibility.

7 MS. CHABERSKI: And I'm not sure there is a
8 demand, because I don't know the basis of -- and neither
9 of us have heard from anyone else, but if we can see a
10:00 10 need coming, maybe you want to have some things in the
11 hopper in case the regulated community wants it or you see
12 a demand.

13 CHAIRPERSON CLEMENT: Mr. Fulton.

14 MR. FULTON: I'll speculate a little more and
10:00 15 then I'll stop. But I'll talk with Bill Bunch and try to
16 learn more about this topic. But as with a lot of
17 predicted models, that's what Tier 2 is, it's a prediction
18 of risk, is the controversies don't arise over how
19 necessarily the model works, it's about the assumptions
10:01 20 built into it and how maybe the data that feed into the
21 model are collected. That could be another issue as well.

22 So, I would like to sit down with Bill and
23 whomever else that has an issue and talk through that.
24 And if a workshop is necessary, we will do that, but,
10:01 25 again, I just speculated on why this might be a new topic,

1 but I won't belabor it anymore.

2 CHAIRPERSON CLEMENT: And I would ask the public
3 and those that are representing the regulated community
4 that are here today and that have contacts, if this is an
10:01 5 issue, please let us know, because, you know, the fund is
6 closing and we want to be responsive to these issues if
7 it's appropriate. We can't work in a vacuum. And,
8 unfortunately, because Mr. Bunch isn't here, I know that
9 he probably had more to say about this than his brief
10:02 10 e-mail to me, which is typically what we do, we get an
11 agenda item, I add it. If it's something that the
12 individual is not going to be here to represent, we
13 usually have a conversation, but since it's an open
14 meeting law requirement that we don't have a lot of
10:02 15 discussion outside of the public, we are very circumspect
16 about these discussions.

17 So, Bill and I did not have a discussion. Mr.
18 Bunch and I did not have a discussion prior to this
19 meeting. So, I apologize that we don't have more
10:02 20 information to provide both the Agency and the Commission
21 and regulated community, so please inform us. And there
22 is nothing that we're not willing to work with if we have
23 specifics and if people are conscientious about
24 participating and if they respond to phone calls and
10:02 25 e-mails.

1 And, you know, we're not -- you know, we're not
2 in the business of making this difficult. We're in the
3 business of trying to move this program forward in a
4 cooperative manner.

10:03 5 So that was my lecture. That is two lectures
6 today. Sorry.

7 So, I guess the consensus here is that we're
8 going to hold off having a Technical Subcommittee meeting
9 unless there's more --

10:03 10 MS. CHABERSKI: Could we approve the item just in
11 case so that --

12 CHAIRPERSON CLEMENT: Sure.

13 MS. CHABERSKI: -- all of a sudden we get 50
14 people that they really want to talk about it, where it's
10:03 15 in place and we don't have to wait another month?

16 CHAIRPERSON CLEMENT: Got it. Is there a motion
17 to approve a Technical Subcommittee meeting that would
18 include discussion of the Tier 2 screening process?

19 MS. CHABERSKI: I make that motion.

10:03 20 CHAIRPERSON CLEMENT: Second?

21 MS. GAYLORD: Second.

22 CHAIRPERSON CLEMENT: All in favor?

23 (Chorus of ayes.)

24 CHAIRPERSON CLEMENT: Anyone opposed?

10:03 25 No. Okay. The UST Policy Commission approves

1 the Technical Subcommittee to hold a meeting as necessary,
2 and, if there is regulatory interest, to discuss the Tier
3 2 screening process.

4 MS. CHABERSKI: And our next scheduled meeting
10:04 5 would be September 9th, so we usually wait a day or two
6 ahead of time to see -- what's today -- a week or so, and
7 after you talk with Bill Bunch, maybe we will get more
8 information to see if it's appropriate.

9 But that's okay, Theresa, September 9th? Keep
10:04 10 that meeting date.

11 CHAIRPERSON CLEMENT: Great. Thank you. Great
12 idea.

13 Okay. Next, the most important, a general call
14 to the public. Do we have any comments, public comments
10:04 15 here today?

16 No? A silent group today.

17 Okay. Discussion of agenda items scheduled for
18 next Commission meeting.

19 Ms. Gaylord.

10:04 20 MS. GAYLORD: I have a proposal, just an idea. I
21 will break it into three parts because I think we want the
22 AG's office probably to tell us that this would be okay,
23 and I think they will probably be interested in one
24 specifically.

10:05 25 First, I propose we go to quarterly meetings.

1 The way that that works best, if we could do two other
2 things. One is -- the second thing is, in other boards
3 and commissions that I've sat on, the chair has the
4 authority to ask subcommittee chairs to hold meetings
10:05 5 without a vote of the board. And if we go to quarterly,
6 it would work best if we had the ability for any member of
7 the Commission to send an e-mail to the Chair with a copy
8 to DEQ asking for a subcommittee meeting or asking for a
9 special committee meeting.

10:05 10 If the Chair has authority to request a
11 subcommittee meeting or schedule a special committee
12 meeting, then it seems to me we could go to quarterly
13 meetings and still address any issue that comes up along
14 the way.

10:05 15 I think we could get into open meeting law
16 trouble if we have Policy Commission meeting -- Policy
17 Commission Members -- sorry -- sending e-mails to the
18 entire Commission and everybody discussing an issue and
19 whether or not it needs to be handled in a meeting. Those
10:06 20 tend to evolve into discussions.

21 So, if we could avoid that, if it's just a
22 request for a meeting from any member of the Commission to
23 the Chair and the Chair using her own authority to
24 schedule or not schedule, I think this could work.

10:06 25 MS. CHABERSKI: Can I ask a question on that?

1 We've got hung up on those approvals of an agenda item,
2 which holds us up for another month, so would that be
3 included, that the Chair would have that ability to have
4 that technical item on the agenda?

10:06 5 MS. GAYLORD: On every other board or commission
6 I'm on, the chair has absolute authority to schedule
7 agenda items.

8 MS. HUDDLESTON: Well, that's always the way this
9 board has done it. I think the Chair could suggest that
10:07 10 there will be committee meetings as long as it's
11 understood that the committee was there for open
12 discussion and to make recommendations to the board and
13 the board would have to ratify and vote on anything to
14 make the decision.

10:07 15 CHAIRPERSON CLEMENT: That would certainly
16 streamline the process, and it would make it much more
17 responsive to the needs of what is going to be a very
18 rapidly ending program here, and I really like that
19 suggestion a lot.

10:07 20 MS. GAYLORD: And I did look at -- I specifically
21 looked at this whole idea of whether you need a vote to
22 put something on the agenda, whether you need a vote to
23 hold a meeting. Because I'm not an expert, I defer to the
24 AG's Office, but I did look at it and it looked okay to
10:07 25 me.

1 MS. HUDDLESTON: I think it's doable.

2 CHAIRPERSON CLEMENT: Do we have to vote on this?

3 MS. GAYLORD: I think we do.

4 CHAIRPERSON CLEMENT: Okay. Does anybody -- I
10:08 5 think all of us are very busy people, and I'm commuting
6 now a very long distance, so the opportunity not to have a
7 monthly meeting is very much in -- I'm very happy about
8 that, frankly. So...

9 MS. CHABERSKI: Can I ask one question?

10 CHAIRPERSON CLEMENT: Certainly.

11 MS. CHABERSKI: If something comes up and you
12 want to call another meeting outside of our quarterly,
13 then that's possible, you have that authority?

14 CHAIRPERSON CLEMENT: Yes.

10:08 15 MS. CHABERSKI: Okay. Like an emergency, we have
16 to write a letter, we have this big thing that came up in
17 the community.

18 CHAIRPERSON CLEMENT: Right.

19 MS. GAYLORD: And that is my specific suggestion
10:08 20 is that the Chair can call a meeting, a monthly meeting at
21 the request of any Policy Commission Member to address an
22 issue that can't wait quarterly.

23 CHAIRPERSON CLEMENT: Just so you know how we've
24 operated, or I've operated, if there is an agenda item
10:08 25 that a Commission Member requests, I do not filter. You

1 know, I add them to the agenda. We're all professionals.
2 We know how this works. I've not seen that be -- you
3 know, nobody, you know, does that in a manner that would
4 in my opinion be considered inappropriate.

10:09

5 So, I think this could work very easily and I
6 would continue to make that commitment. It probably would
7 require me to have a little more discussion when the
8 agenda items are proposed so that we can get the substance
9 out.

10:09

10 Okay. So, do we have a motion?

11 MS. GAYLORD: So I would like to move that the
12 Commission go to quarterly meetings as a general rule with
13 additional meetings scheduled by the Chair at the Chair's
14 discretion upon the request by any Policy Commission
15 Member, and specifically included implicit in that is the
16 idea that the Chair has complete discretion to schedule
17 agenda items for any meeting at the request of any
18 Commission Member.

10:09

19 CHAIRPERSON CLEMENT: Okay. Did you want to add
10:10 20 anything about the subcommittees or you want that as a
21 second motion?

22 MS. CHABERSKI: I was going to say something
23 about that. Should we keep the monthly meetings on a
24 schedule so that we could still see if there is interest
10:10 25 in the meetings?

1 MS. GAYLORD: Why don't we do that as a second
2 motion.

3 CHAIRPERSON CLEMENT: Yeah, that makes sense.

4 MS. GAYLORD: So the first motion is just about
10:10 5 Commission meetings.

6 CHAIRPERSON CLEMENT: I'm sorry, could you repeat
7 that?

8 MS. GAYLORD: I move that the Policy Commission
9 move to quarterly meetings with additional meetings
10:10 10 scheduled by the Chair at the Chair's discretion upon the
11 request by any Commission Member, and the Chair has
12 complete discretion to schedule agenda items at the
13 regularly scheduled meetings or at the special meetings.

14 MS. JOHNSEN: I second.

10:10 15 CHAIRPERSON CLEMENT: Okay. There is a second
16 from Ms. Johnsen. Sorry, Tricia.

17 Okay. Any discussion? Okay.

18 All in favor?

19 (Chorus of ayes.)

10:11 20 CHAIRPERSON CLEMENT: Anyone opposed?

21 No. Okay. The motion passes.

22 MS. GAYLORD: So I'd like to move that the Policy
23 Commission subcommittee meetings be scheduled at the
24 discretion of the Chair of the Policy Commission and the
10:11 25 subcommittee chair, with agenda items being set for those

1 meetings by the Chair of the Policy Commission at her
2 discretion or upon the request by any Commission Member.

3 CHAIRPERSON CLEMENT: Okay. Is there any
4 discussion?

10:12 5 MS. CHABERSKI: You used the key word that she
6 can approve the agenda items?

7 CHAIRPERSON CLEMENT: Is there a second?

8 MS. CHABERSKI: I second the motion.

9 CHAIRPERSON CLEMENT: All in favor?

10:12 10 (Chorus of ayes.)

11 CHAIRPERSON CLEMENT: Anyone opposed?

12 No? The motion passes. Thank you.

13 MS. CHABERSKI: Do we speak about when does it
14 start, monthly meetings?

10:12 15 CHAIRPERSON CLEMENT: Let's decide now as a
16 consensus. I mean, the typical -- and, I'm sorry, we have
17 a comment period that -- and let us finish this, and then
18 I will get -- even though if we are going out of order, I
19 will be happy to take another public comment.

10:13 20 You know, quarterly's usually January, let's see,
21 March, yeah, you know, September, so, September would be a
22 quarterly meeting.

23 Do we -- what are other people's opinions about
24 that? Ms. Gaylord?

10:13 25 MS. GAYLORD: I guess for me, whether we have an

1 October or November meeting depends on whether we will
2 have sufficient information to decide -- or to evaluate as
3 Policy Commission the possible letter to the legislature.

4 MR. FULTON: You mean September/October meeting?
10:13 5 You said October/November.

6 CHAIRPERSON CLEMENT: It's August, September
7 October.

8 MR. FULTON: Sorry.

9 CHAIRPERSON CLEMENT: Well, if you have a
10:13 10 requirement to submit that by September 1st, and we would
11 also ask, since it is public, could you make sure that you
12 send that also to the Commission?

13 MR. FULTON: Absolutely. And it will be posted
14 on our website as well.

10:13 15 CHAIRPERSON CLEMENT: If we could get it
16 directly, it would be helpful.

17 MR. FULTON: Uh-huh. Every Commission Member
18 will get a copy.

19 CHAIRPERSON CLEMENT: We should have it and we
10:14 20 should be able to have a September meeting. I do think
21 that this is a pretty significant issue, and that my
22 suggestion is that we hold that September meeting and then
23 begin our quarterly process from there. And if we have
24 additional meetings, we will. But I really like getting
10:14 25 into a lesser frequency if we don't need it.

1 And then, we will go out of order, but I did want
2 to take the general comment from the audience that was
3 very interested in commenting. Yes, please.

4 MS. KELLY: Dan Kelly, Madam Chair. I'm too not
10:14 5 an expert on open meeting law, but I just need to point
6 out, you guys took a motion under Item 11, discussion for
7 the agenda items for the next Commission meeting, so we
8 had new business that wasn't on the agenda, then we voted
9 on it and we approved it. And we did that under Item 11,
10:14 10 which is supposed to happen in the next meeting.

11 CHAIRPERSON CLEMENT: No. We have -- Item 11 is
12 agenda items and schedule for our next Commission meeting.

13 MR. KELLY: Right.

14 CHAIRPERSON CLEMENT: And if you look at -- there
10:15 15 is an open -- let's see. Yes, at the top.

16 MS. GAYLORD: Discuss, deliberate or vote on any
17 item listed on the agenda.

18 CHAIRPERSON CLEMENT: At the top we have an open
19 -- and we've been pretty rigorous about this. The
10:15 20 Commission may discuss, deliberate or vote on any item
21 listed on the agenda.

22 And so the schedule for the next Commission
23 meeting is on the agenda, and we just had a discussion,
24 and the subcommittee meetings are also on the agenda. So,
10:15 25 I think we're perfectly appropriate in deciding as a

1 Commission what our future schedule should be.

2 MR. KELLY: Okay.

3 CHAIRPERSON CLEMENT: But I appreciate your
4 comment.

10:15 5 Okay. Announcements. We are still going to hold
6 the September 23rd meeting. The November -- and we are
7 going to potentially hold a September 9th Technical
8 Subcommittee meeting depending on input regarding the risk
9 assessment process, the Tier 2 risk assessment process.

10:16 10 We are going to potentially and probably hold an
11 Evaluation Subcommittee meeting with Mr. Bunch to discuss
12 the September letter and the future of the SAF Fund, and
13 potential response by the full Commission.

14 The other announcement is that, because we have a
10:16 15 conflict with a calendar date for the Technical
16 Subcommittee, the November 11th prescheduled meeting is
17 now scheduled for November 10th because November 11th is
18 Veterans Day.

19 And, you know, I just want to go through one
10:17 20 other -- I think that's it.

21 And just one reminder, we will have the LUST
22 statistics added to our next meeting that we discussed
23 previously.

24 Okay. Great. With that, thank you everyone and
10:17 25 we adjourn the August 26th, 2009 Underground Storage Tank

1 Policy Commission meeting.

2 (10:17 a.m.)

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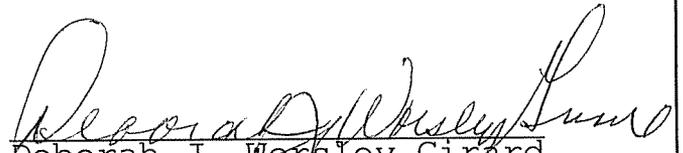
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C E R T I F I C A T E

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 52 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 26th day of August, 2009.


Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477