



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
September 23, 2009  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

REPORTED BY:  
Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477

WORSLEY REPORTING, INC.  
Certified Reporters  
P.O. Box 47666  
Phoenix, AZ 85068-7666  
(602) 258-2310  
Fax: (602) 789-7886

(ORIGINAL)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX FOR THE AGENDA ITEMS

AGENDA ITEMS:	PAGE
1. CALL TO ORDER AND ROLL CALL	4
2. APPROVAL OF MINUTES FROM AUGUST 26, 2009 MEETING	5
3. ADEQ UPDATES	5
4. SAF STATUS	14
5. DISCUSSION OF SEPTEMBER 1, 2009 UST ASSURANCE ACCOUNT (SAF) LIABILITIES REPORT	18
6. DISCUSSION OF RECENT LEGISLATION AND RULES AFFECTING THE UST PROGRAM	18
7. EVALUATION SUBCOMMITTEE UPDATE	29
A. SEPTEMBER 3, 2009 SUBCOMMITTEE MEETING	
8. COMMISSION RECOMMENDATIONS IN RESPONSE TO ADEQ SEPTEMBER 2009 UST ASSURANCE ACCOUNT LIABILITIES REPORT	19
A. FINANCING OF SHORT TERM SAF LIABILITIES	44
B. FINANCING OF LONG TERM SAF AND UST PROGRAM REQUIREMENTS	54
C. EXTENSION OF THE SAF FUEL TAX	61
D. EXTENSION OF SAF ELIGIBILITY FOR CURRENT AND FUTURE RELEASES	63
9. TECHNICAL SUBCOMMITTEE UPDATE	67
10. GENERAL CALL TO THE PUBLIC	42
11. SUMMARY OF MEETING ACTION ITEMS	67
12. DISCUSSION OF AGENDA ITEMS AND SCHEDULE FOR NEXT COMMISSION MEETING	71
13. ANNOUNCEMENTS:	71
A. NEXT POLICY COMMISSION MEETING IS SCHEDULED TO BE HELD ON DECEMBER 16, 2009 AT 9:00 A.M. IN ROOM 250 AT ADEQ LOCATED AT 1110 W. WASHINGTON, PHOENIX, ARIZONA	
14. ADJOURN	72

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMITTEE MEMBERS PRESENT:

- Gail Clement, Chair
- Catherine Chaberski
- Theresa Kalaghan
- Michael Fulton
- Joe Mikitish, Esq.
- Jon Findley

P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

09:03

CHAIRPERSON CLEMENT: Good morning. I'd like to welcome everyone to the September 23rd, 2009 Underground Storage Tank UST Policy Commission meeting.

09:03

And I'm glad to see the audience here today. We have a very important topic, and I just wanted to announce before we get into our regular agenda that we're going to move the agenda around slightly to allow public comment before the Commission actually discusses I think what is a key agenda item, State Assurance Fund and its funding and its future in terms of response to the DEQ report that went out September 1st, 2009.

09:03

This is a public meeting and we have to follow certain protocols, so, you know, please bear with us. It's very formal, but it is a requirement of public law that we operate in a certain way.

09:04

So, with that, I'm going to now turn and take roll of our Commission Members. We do have a quorum today, and we are going to proceed. Thank you.

MR. MIKITISH: Joe Mikitish from the Attorney General's Office.

MR. FULTON: Mike Fulton with ADEQ.

MS. CHABERSKI: Cathy Chaberski.

CHAIRPERSON CLEMENT: Gail Clement, Chair.

1 MS. KALAGHAN: Theresa Kalaghan.

2 MR. FINDLEY: Jon Findley.

3 CHAIRPERSON CLEMENT: Thank you. Okay. We will  
4 move on to the number two item, approval of the minutes  
09:04 5 from the August 26th, 2009 meeting.

6 Have the Commission Members received those  
7 minutes?

8 Have they had an opportunity to read them?

9 Are there any comments or changes or edits?

09:04 10 MR. FULTON: Not from me.

11 CHAIRPERSON CLEMENT: Is there a motion to  
12 approve the August 26th, 2009 UST Policy Commission  
13 meeting minutes?

14 MS. CHABERSKI: Motion to approve the August 26,  
09:04 15 2009 meeting minutes.

16 CHAIRPERSON CLEMENT: Is there a second?

17 MS. KALAGHAN: I second the motion.

18 CHAIRPERSON CLEMENT: All those in favor?

19 (Chorus of ayes.)

20 CHAIRPERSON CLEMENT: Anyone opposed?

21 The August 26th, 2009 UST Policy Commission  
22 meeting minutes have been approved.

23 Okay. I know we're all here for certain reasons,  
24 but it might be appropriate if we go ahead with the ADEQ  
09:05 25 updates and the SAF status before we really get into the

1 discussion of the September 1st report.

2 Mr. Fulton.

3 MR. FULTON: Okay. As we have been -- we will  
4 review this pie chart sheet first. We've got some changes  
09:05 5 on there this month as a result of last month's request.

6 Start from the top down, we report our LUST  
7 leaking tanks reported across the board, and our closed  
8 rate is -- we had a little bit of a surge this month,  
9 really not a whole lot. It's pretty hard to change those  
09:06 10 percentages given those numbers we've had in the past.

11 Pie chart showing a status of cases. Most of those are  
12 groundwater impact. That really reflects the status of  
13 the Fund if you think about what we have lying forward,  
14 the number of sites that are still open to groundwater  
09:06 15 impacts mostly, so, that's something to keep in mind when  
16 we talk about future liabilities.

17 We have our pending review report, which we've  
18 modified slightly to show a few more documents and then  
19 also our time frames, which this is the biggest change to  
09:06 20 this month's report, showing what we have in-house, and  
21 where we are on decisions pending, less than 30, more than  
22 30, greater than 60, greater than 90 and greater than 120.

23 And I will just jump to the 120. That's an  
24 unacceptable number of documents in for 120 days. I don't  
09:07 25 know a whole lot of reasons for why they're still here.

1 There could be reasons we could attribute to incomplete  
 2 documents or inability to get the technical information  
 3 in-house, but that's what we need to work on is getting  
 4 that number closer to 60 days than 120 days. So that's  
 09:07 5 the purpose, I think, you wanted to see. I don't know if  
 6 this meets Gail's objectives that she wanted to have that  
 7 you laid out last month.

8 CHAIRPERSON CLEMENT: I think this is exactly  
 9 what we wanted to see, at least from my perspective, and I  
 09:07 10 think the Commission would be very interested in seeing  
 11 these pending dates reduced over the next few months, and  
 12 perhaps if they do not, at least have a more definitive  
 13 discussion about, we have this issue that may be of  
 14 general interest versus a specific interest.

09:08 15 MR. FULTON: Okay.

16 CHAIRPERSON CLEMENT: Anything additional?

17 MS. CHABERSKI: I just have a question. So, it  
 18 could be back and forth. So, if the person who submitted  
 19 something hasn't responded, the clock keeps ticking, and  
 09:08 20 if you get no response, so is that what this reflects,  
 21 also by both parties' time frame?

22 MR. FULTON: They've pointed it out, I think,  
 23 like I said, without respect to knowing where -- whose  
 24 court the ball is in.

09:08 25 MS. CHABERSKI: Okay.

1 MR. FULTON: After 120 days, you should be able  
2 to make a decision to either deny it or approve it. Yeah.  
3 So, that's the interaction that has to occur rather than  
4 letting something go on.

09:08 5 MS. CHABERSKI: Okay.

6 MR. FULTON: We don't have LTF on these documents  
7 here, so it's not the same length of time frame setup, as  
8 you might be familiar with in other programs, but we are  
9 aware of the fact that the clock is ticking, at least  
09:09 10 apparently now that time is of the essence, we need to get  
11 things either approved or denied as quickly as possible.

12 MS. CHABERSKI: So, if it's approved or denied,  
13 it starts the clock again. And then if they send  
14 something in, then we're back to the submitting and 30  
09:09 15 days. Is that how your clock works?

16 MR. FULTON: We haven't been working it with the  
17 reset all the time, I don't believe. Joe, you can expand  
18 on that right now.

19 MR. DROSENDAHL: Yeah. The time frames would end  
09:09 20 when we send out an official determination. Like with an  
21 SCR, if we determine that an SCR is deficient, we send out  
22 an official letter saying it's deficient. When they  
23 resubmit the revised SCR, that sets a new time frame.

24 MS. CHABERSKI: Okay. Thanks.

09:09 25 CHAIRPERSON CLEMENT: Just a quick note. Since

1 we have a new group it looks like here today, perhaps we  
2 could not use so many acronyms, because I think we're  
3 familiar with what these words mean, but maybe everybody  
4 in the audience is not.

09:10 5 So, licensing time frame, LTF, in certain  
6 components of the program, the Agency is required to meet  
7 deadlines for reviews and responses, and particularly in  
8 the State Assurance Fund, the SAF Fund.

9 In most of these corrective action documents,  
09:10 10 site investigation and cleanup documents, they are not  
11 required to meet a specific time frame, so that's what Mr.  
12 Fulton was referring to with "we are not subject to LTFs  
13 in this program".

14 And then SCRs would be -- Joe.

09:10 15 MR. DROSENDAHL: It stands for Site  
16 Characterization Report.

17 CHAIRPERSON CLEMENT: Thank you.

18 MS. KALAGHAN: I have a question for Mike about  
19 this pending 120 days. I'm wondering if this is something  
09:10 20 you are looking into to determine what is stalling these  
21 things or if these are just going to keep showing up?

22 MR. FULTON: I am.

23 MS. KALAGHAN: I also noted that three of them  
24 are risk assessments and they look like there haven't been  
09:11 25 any risk assessments submitted. They are the ones hanging

1 out to this 120 days. Would that be an issue with  
2 staffing?

3 MR. FULTON: It could be, but we're looking at  
4 the reasons for that part of it. It stems from last  
09:11 5 month's discussion -- I was going to get to this a little  
6 further on -- was, we've had some questions about the risk  
7 assessment process and information requirements for the  
8 risk assessment, which could be contributing to the amount  
9 of time to these risk assessments. And to that end we  
09:11 10 were going to try improve our guidance online and also our  
11 public available guidance on risk assessments, and also  
12 hold one or more workshops with stakeholders on the risk  
13 assessment process.

14 This is really, I think, in recognition of the  
09:11 15 fact that we should anticipate more risk assessments in  
16 the future for two reasons: One, as the Fund comes to an  
17 end, there will be a temptation to want to put sites into  
18 a risk assessment category for closure. More is -- I  
19 mean, the reality is, this limits the coverage approached  
09:12 20 on particular releases. That might be an option left.

21 It's probably an option which should be  
22 considered when it's appropriate, whether or not you've  
23 spent all of your money under the Fund. But I think we're  
24 just anticipating we're going to get more of those. Joe  
09:12 25 and I have been talking about how to absorb that work load

1 anticipated that it's going to come, and we need to look  
2 at cycle times and also volumes of work. So, we're  
3 working on that. We will report out on that every month.

09:12 4 CHAIRPERSON CLEMENT: Question on that. Are you  
5 doing all of your risk assessments in-house ADEQ  
6 currently?

7 MR. FULTON: Currently, yes.

8 CHAIRPERSON CLEMENT: Is there an option to using  
9 ADHS, risk assessment?

09:13 10 MR. FULTON: I don't know about ADHS, but I'm  
11 interested in having more than one plan, plan A and plan  
12 B, rather than having a single reviewing. That's what Joe  
13 and I are also discussing, what options we have  
14 contractorwise, to cycle times down as we get more into  
09:13 15 these.

16 CHAIRPERSON CLEMENT: Do you have an anticipated  
17 date for when you are going to produce new guidance on the  
18 web?

19 MR. FULTON: No. We just had this discussion a  
09:13 20 couple of days ago, and I talked with Jeanene and Joe  
21 about it. I don't think we have major modifications. I  
22 think it's more about, we're trying to get those who might  
23 be less familiar with risk assessment procedure, more  
24 familiar with our procedure. That could include these  
09:14 25 workshops, or the facility meetings, as we often have

1 one-on-ones, but at the time, we will get the  
2 owner/operators to see that they have what information  
3 they might need to put together a good proposal for risk  
4 assessment. So, that's also the anticipation, we're going  
09:14 5 to have more facility meetings with owner/operators.

6 CHAIRPERSON CLEMENT: Good. I think that's  
7 really important to keep it. As these time frames shrink,  
8 it's really important to keep the communication going, get  
9 as many of these facilities through the process as  
09:14 10 possible.

11 Do you have any potential dates for the workshop  
12 lined up?

13 MR. FULTON: No. We will report on that next  
14 month.

09:14 15 CHAIRPERSON CLEMENT: Okay. Our intention is not  
16 to meet until December, so perhaps at the end of this, we  
17 can line up some reporting items that you could perhaps  
18 post or e-mail to the Commission so that we could be kept  
19 updated.

09:15 20 For the audience, we have typically met either  
21 monthly or bimonthly, or every other month, and we are now  
22 going to a quarterly format, unless there is a need for  
23 additional meetings, because as the program winds down, we  
24 just have not had that many agenda items to address, and  
09:15 25 it's difficult to get busy people here all at once.

1           So, if we could have a more informal method of  
2 communication going on, perhaps, you know, we'll put some  
3 agenda items together in terms of follow-up, that would be  
4 good.

09:15 5           MR. FULTON:   Okay.

6           CHAIRPERSON CLEMENT:   Thank you.

7           MR. FULTON:   The bar graph shows State Assurance  
8 Fund running totals, and as has been very typical, not  
9 seeing a real spike in determinations or claims received,  
09:16 10 and everything is going out in less than 90 days.  So,  
11 it's a well-oiled machine, as is the appeal machine.  We  
12 have a typical number of appeals, but most of those --  
13 many of those get resolved informally as you can see.

14           That's all I have on the -- well, I have some  
09:16 15 atypical updates.

16           CHAIRPERSON CLEMENT:   Okay.

17           MR. FULTON:   Also we're making good progress on  
18 spending our stimulus money.  The American Reinvestment  
19 Recovery Act, if that's what it's called, just to remind  
09:17 20 those who haven't been in this discussion, we received  
21 about \$3.2 million through EPA Region 9 to perform  
22 cleanups on eligible sites throughout Arizona.  Those are  
23 all posted on our website if you are interested in seeing  
24 which ones those are.  For the most part, they're orphans  
09:17 25 that we're working on that had been in our -- part of our

1 State Lead Program. We're using federal monies in the  
2 ARRA to advance those investigations to close, and I just  
3 started seeing some invoices come through, so we're  
4 actually getting the work done and paid and out the door,  
09:17 5 which is the big measuring point for our reporting  
6 requirements to EPA and to the State.

7 That's all I have for that, and I will add some  
8 other things to this SAF status report.

9 CHAIRPERSON CLEMENT: Let's move to agenda items.  
09:18 10 Let's move six before five and knock that out, then we  
11 will get to five, which is the meat of this meeting.

12 MR. FULTON: Okay. SAF status. This is the  
13 single sheet that has been typical for this monthly  
14 meeting, showing an updated number for our -- actually, I  
09:18 15 just noticed here that the FY 2010 says estimated  
16 transfers. That's the transfer amount that was put  
17 forward in the latest budget. It's 15 point -- I've been  
18 calling it 15.2. It's 15,182,900. That's what's to be  
19 transferred out of the UST Fund into the General Fund as  
09:18 20 put forward in House Bill 2643.

21 The important thing to remember, I believe, is,  
22 what we're trying to do is cycle the transfers to not all  
23 occur all at once and keep our cash flow working. We  
24 don't have a huge beginning balance to take all of the 15  
09:19 25 million at the same time and still pay claims. Still

1 struggling to avoid claim ranking, but that's our goal,  
2 but you never know what's going to happen.

09:19 3 So, under this scenario, we still have some  
4 balance at the end of the year, so it's not what I would  
5 -- it's not a 90-day reserve, so it gets close to the nub  
6 there.

09:20 7 In the news you've seen as recently as yesterday  
8 that every State agency has been asked again to come up  
9 with an additional 15 percent cut above and beyond what  
10 we've already cut for 2010, primarily aimed at trying to  
11 balance the General Fund again. So, looking at General  
12 Fund cuts 15 percent, but all funds are on the table,  
13 including Assurance Fund. So, we're still deciding how we  
14 can absorb that.

09:20 15 MS. KALAGHAN: Is this projected ending balance  
16 as of June 2010?

17 MR. FULTON: Yes, that would be the end of fiscal  
18 year balance.

09:20 19 CHAIRPERSON CLEMENT: When is the 15 percent cut  
20 expected to -- when do you have to respond to the  
21 Governor?

09:21 22 MR. FULTON: Within the next couple of weeks.  
23 So, as you might have read, the Governor did approve the  
24 budget but it's still a big imbalance. And without the  
25 prospect of a lot of new revenues coming in, the only

1 other way to make it balance is to cut. So 15 percent  
2 across -- it's not going to be necessarily applied across  
3 the board. Departments need to decide how to best manage,  
4 and also what programs might just be eliminated. So,  
09:21 5 there is a lot of tough choices to make.

6           Again, I will re-emphasize, we're not ranking  
7 claims today, but we have been not shy about repeating --  
8 preparing to do so if we have to. And if you're  
9 interested in understanding the ranking process, it's  
09:21 10 described in Rule -- and I think we pointed this out  
11 before, but it's in R1812-612. So, that's what we have to  
12 look at if we have to rank. We haven't finished our  
13 looking at how we're going to address the 15 percent.

14           CHAIRPERSON CLEMENT: What would that mean for an  
09:22 15 agency like ADEQ? What's the bottom dollar of 15 percent?

16           MR. FULTON: Our General Fund used to be at about  
17 36 million. Now it's about 15, so 15 more percent of 15.  
18 But all the other funds we have as well, I'm sure are  
19 larger than 15 million with 15 percent, so it's a big  
09:22 20 amount of money.

21           CHAIRPERSON CLEMENT: And you have to be really  
22 careful, because you have to have certain matching dollars  
23 in many of these funds to continue to get your federal  
24 dollars in many programs.

09:22 25           MR. FULTON: Correct. Some of our grants,

1 including some of our UST grants are -- require a matching  
2 amount of money, smaller percentage, usually 10 percent,  
3 or something like that, which we pay out of the State  
4 Assurance Fund. I don't think we're in danger of that,  
09:23 5 but you are right, across the board as a department,  
6 there's a lot of other grants that we get that require  
7 matching amounts. If they're swept to nothing, it's going  
8 to be hard to keep the grant money coming in.

9 MS. CHABERSKI: And if you have federal money  
09:23 10 coming in, you can't touch that for balancing the budget;  
11 correct?

12 MR. FULTON: Correct. The federal grants are not  
13 on the table with the 15 percent reduction.

14 So that's the reality of where we are. With this  
09:23 15 fund status, it's very dynamic and it's always subject to  
16 change, so I don't know when these 15 percent cuts would  
17 have to be absorbed or the timing of that is still  
18 unclear, so that will be more information to report out.

19 But if we do have to start ranking, there is a  
09:24 20 noticing requirement by the Director when it looks like we  
21 have to rank, so that's something I have to keep an eye  
22 on.

23 CHAIRPERSON CLEMENT: Thank you.

24 MR. FULTON: That's all I have on the SAF status.

09:24 25 CHAIRPERSON CLEMENT: Let's jump to, then, any

1 rules or legislation. I don't think there is any.

2 MR. FULTON: No, there is nothing we need to  
3 report on that. Our rules moratorium is still in effect.  
4 We have our operator certification rules, operator  
09:24 5 training rules that are still on the menu. When we get  
6 around to those, they will have to rise up to a higher  
7 priority, but we have until 2012 in fact to describe that  
8 program more fully, and we will try to do that as soon as  
9 we can.

09:24 10 Legislation, we don't have anything out there  
11 right now as a department for attacking the UST program.

12 CHAIRPERSON CLEMENT: Okay. Thank you. And now  
13 let's go -- if you wouldn't mind, the way that I'd like to  
14 structure this next piece that will be focused on the  
09:25 15 September 1st, 2009 Underground Storage Tank Assurance  
16 Account Liabilities Report prepared by DEQ. There was  
17 also an Evaluation Subcommittee of the Policy Commission  
18 that was held on September 3rd, and then the Commission  
19 will be drafting some response to the ADEQ report to the  
09:25 20 Legislature and the Governor.

21 So, what I'd like to do is structure this that  
22 Mike gets a report out of the report itself, I give a  
23 report out of the Evaluation Subcommittee, we ask for  
24 general comment, and then the Commission discusses  
09:25 25 potential response to the report, if that's acceptable in

1 terms of sequencing. Okay.

2 MR. FULTON: All right. I think it's been made  
3 available to everybody. This is the -- it's called the  
4 UST Assurance Account Liabilities report. It's not a  
09:26 5 title I chose. It was how it appeared in session law, so,  
6 that was the reference point.

7 If you haven't got it in front of you, I think we  
8 still have some extra copies. And it's also been posted  
9 on our website since the date of its publication,  
09:26 10 September 1st.

11 It's a pretty brief report outlining the purpose,  
12 which was laid out in session law, attached to 1306, which  
13 require us to submit a report regarding the anticipated  
14 liability, financial liability of the UST account based on  
09:26 15 applications for payment submitted to the Department by  
16 June 30, '09.

17 There is a narrative that follows the summary,  
18 but the bottom line is that past transfers from the Fund,  
19 and actually current transfers in fiscal year '10 have  
09:27 20 significantly reduced the balances to the Fund and, thus,  
21 the resource may be necessary to address obligations to  
22 the Department that put forward 1306 beyond the  
23 termination of the Fund.

24 So, those transfers are -- they weren't  
09:27 25 anticipated when the sunset was begun. I think it's the

1 biggest take away from this report. And how those  
2 transfers have impacted will impact our ability is the  
3 subject of this report.

4 I'll just skip through the narrative where you  
09:27 5 can read on your own, and we'll talk about the analysis in  
6 a second, but also attached, as the audience for this  
7 report was a legislative one, we attached maps of open  
8 leaking underground storage tank sites so the legislators  
9 could get an idea of what was in their district. And a  
09:28 10 table, attachment 2 of the implementation dates of 1306,  
11 which described where we are in the process.

12 1306 was passed in 2004, and as late, as mapped  
13 out in both 1306 in the session law, there is a sunset  
14 implementation sequence put forward in the statute, and  
09:28 15 that table summarizes it. We're down past September 1,  
16 2009, and the big -- the next big important date coming in  
17 the sunset is June 30, 2010, from the last date for filing  
18 of claims are due.

19 So, claims not made by then are extinguished, and  
09:29 20 we start looking at closing out the books on the existing  
21 claims.

22 On the back, which is essentially the outline of  
23 this report, is Attachment 3. That's where I will spend  
24 most of my time remaining on this. This is really an  
09:29 25 outline that's expanded upon in the report, a little bit

1 more narrative. So that's where I'd like to walk through  
2 right here, the back sheet.

3 Now, starting with the balance -- let me just  
4 preface this. We had to make a number of assumptions to  
09:30 5 talk about what we anticipate the liability being, some  
6 which are notable, and some which are just really broad  
7 predictions about the outstanding liabilities to the Fund.

8 The hard number we had was a balance beginning of  
9 June 30 of '09 about 19 and a half million. We predict on  
09:30 10 our revenue side that will earn about 29 and a half  
11 million a year out through the sunset date of December 31,  
12 2013. That number, of course, could vary. We've seen  
13 some variation in that number. To date, it's actually  
14 going down a bit. Last month we took in about 2.2  
09:31 15 million, which we had been predicting I think in the 2.5  
16 range.

17 So, gasoline demand is down, and that can impact  
18 this overall analysis, but we had to make this assumption  
19 of about 29 and a half million a year, so there's our  
09:31 20 total revenues.

21 Subtracting from that liabilities, we have a  
22 universe of known eligible leaking tanks at about 450  
23 facilities. We applied an educated guess, how much it  
24 would cost to clean up the leaking tanks of those  
09:31 25 facilities, and we need to recognize that that number is

1 different than the limits of coverage that are available  
2 to those releases. It's much lower. It's not likely --  
3 we had to temper that number a bit to make it a bit more  
4 real, because if we had counted for the total limits of  
09:32 5 coverage remaining, I can't remember, Tara, what that  
6 number was.

7 MS. ROSIE: It was about 240 million.

8 MR. FULTON: About \$240 million remaining in  
9 coverage. We tempered that number for a couple of  
09:32 10 reasons. One is it's very unlikely that all that money  
11 could be spent by June 30, 2010. It's almost as much  
12 money as has been turned out of the Fund since its  
13 inception, so we had to apply something a bit more  
14 realistic to it. Even this 96.8, I think, is a lot higher  
09:32 15 than we will actually realize by 2010, but we had to come  
16 up with something, assuming that work has to be done on  
17 all these remaining eligible sites. That's another  
18 assumption built in.

19 Will \$96.8 million be expended by June 30, 2010?

09:33 20 Probably not. Probably not. But for purposes of the  
21 discussion, that's the number we've used.

22 Administrative costs for the Fund through 2013,  
23 about 27 million.

24 Post '10 transfers from the Fund tells you how  
09:33 25 dynamic this has been. This was the number I had earlier

1 was 14.6 million and it turned into 15.2. So, this number  
2 is dated already. But for the orders of magnitude, it's  
3 not that far different.

4 So our total liability prediction of 140 million,  
09:33 5 simple subtraction on the bottom shows that we predict  
6 about 12 and a half million would be left in 2013, as  
7 opposed to the 60 million that was projected in the Senate  
8 Bill -- actually the session law 1306, Senate Bill 1306.

9 The other assumption built into this, which is  
09:34 10 not real, is that there will be no further transfers from  
11 the Fund between now and 2013. We're already talked about  
12 that.

13 So, it made this analysis difficult to do because  
14 of the dynamic nature of what we are facing. So, for  
09:34 15 those that are less familiar with 1306, with the sunset,  
16 the Fund was to be terminated and some backstops built  
17 into that sunset, including having \$60 million left over  
18 after all the claims were paid to take care of managing  
19 orphan sites that still exist, that will still exist that  
09:35 20 might -- are yet to be discovered, and certain  
21 administrative parts of taking care of corrective actions  
22 in a nutshell.

23 60 million was projected as a number that would  
24 be adequate to manage those obligations from the  
09:35 25 Department. We're going to have less than 60 million at

1 this current rate. That could impact our ability to clean  
2 up those orphan sites or to properly manage the corrective  
3 actions that remain. That's basically the summary of the  
4 report.

09:35 5           Whether 60 million is an accurate prediction of  
6 what would be needed for the future, I don't know, but it  
7 was a number that was arrived at when 1306 was negotiated  
8 based on some assumptions of what was known and also  
9 building some cushion for the unknown.

09:36 10           Will 12 million be enough? I don't think so, but  
11 it's hard to predict what is still unknown out there and  
12 how much work is going to get done between now and June of  
13 2010 of our State Assurance Fund. So that's about as  
14 exacting of an analysis as we got on this with the  
09:36 15 information we have.

16           MS. CHABERSKI: Just to clarify, instead of 60  
17 million at the start in the account, there's going to be  
18 12.5. Is there a mechanism where funds can be added after  
19 that every year or what happens to that start number?  
09:36 20 Over time, yeah, we're spending it, but is there a  
21 mechanism for adding to it should it be low?

22           MR. FULTON: You know, I can't -- I'd have to  
23 look at -- this fund that's going to exist after the State  
24 Assurance Fund is terminated is called the Regulative  
09:37 25 Substance Fund. Your question is, could it be added to

1 later through donations or other transfers?

2 MS. CHABERSKI: Some legislative.

3 MR. FULTON: I think it's possible, but there  
4 won't be a dedicated funding mechanism for income into  
09:37 5 that fund, like the State Assurance Fund gets income every  
6 month from the penny a gallon tax. 60 million in theory  
7 is supposed to sit in this fund and be accessed by the  
8 Department to undertake those obligations of the  
9 department. You could also ask, is 60 million likely to  
09:37 10 sit in one place for very long in the State of Arizona for  
11 a number of years? That's another variable we didn't  
12 really have any ability to analyze.

13 MS. CHABERSKI: The reason I was asking that, as  
14 everyone knows the budget and the economy across the  
09:37 15 world, so we know what options are or recommendations or  
16 mechanisms, but I think the key, what you said, there is  
17 no formal mechanism that there is going to be money as  
18 previously done to the SAF every month, that's not in  
19 legislation, that is not in statute, so, there is nothing  
09:38 20 cut and dry about revenue coming in later.

21 MR. FULTON: There is no dedicated funding to  
22 come into the Regulated Substance Fund other than the  
23 balance remaining in the termination of the fund.

24 MS. CHABERSKI: Thank you.

09:38 25 CHAIRPERSON CLEMENT: Mr. Findley.

1 MR. FINDLEY: And when that one cent a gallon is  
2 sunseted, it goes away?

3 MR. FULTON: Correct.

4 MR. FINDLEY: And is there any way to resurrect  
09:38 5 that? It would be a legislative process?

6 MR. FULTON: It would take a legislative act to  
7 either delay the repeal or to repeal the repeal.

8 CHAIRPERSON CLEMENT: And this is actually an  
9 optimistic assessment, because it does not include  
09:38 10 transfers in 2011 and 2012, and so we can be assured that  
11 this situation is going to be worse than it is, because,  
12 given the current economic conditions of this state, 2011  
13 is going to be transfers for sure, I would anticipate.

14 MR. FULTON: I think that's one of the big  
09:39 15 assumptions built in here that's not holding true. Let me  
16 point out, repeat, that there aren't any additional  
17 transfers built into this now, but I guess that's the  
18 optimistic side of this.

19 The pessimistic side of this analysis is  
09:39 20 \$96 million will be expended by 2010, so those might  
21 balance themselves a little bit, but I think it's sure to  
22 say we'll have less than 60 million at this current  
23 projection.

24 CHAIRPERSON CLEMENT: What's the most you have  
09:39 25 paid out in an annual period of time? Just kind of

1 getting a check on that 96 million.

2 MR. FULTON: Tara.

3 MS. ROSIE: I believe the biggest claim payout  
4 year was approximately 29 million, and that would have  
09:40 5 been around 2003, 2004, when we did the encumbered.

6 CHAIRPERSON CLEMENT: Are you anticipating some  
7 -- we talked about this in the last meeting -- paying some  
8 really large chunks going out on sites that are coming in  
9 en masse, like certain companies having a large number of  
09:40 10 sites coming in, are those still anticipated to be paid  
11 out or attempted to be paid out before the end of the  
12 claim period?

13 MR. FULTON: I think we have some larger claims  
14 on the horizon. I will let Tara talk to that.

09:40 15 MS. ROSIE: We are noticing that the amount of  
16 individual claims is increasing, and I think as more and  
17 more sites move to closure, there are some companies that  
18 withhold submittal of costs until they receive that  
19 closure letter. So, for example, in the past year we've  
09:40 20 seen our first reimbursements that were going over a  
21 million in one claim.

22 CHAIRPERSON CLEMENT: For one site?

23 MS. ROSIE: For one site.

24 CHAIRPERSON CLEMENT: But for multiple releases?

09:41 25 MS. ROSIE: Yes, multiple releases on one site.

1 But previously we haven't seen those types of claims come  
2 to us, so I do believe that there is more corrective  
3 action is taking place in response to the fund sunset.

09:41 4 CHAIRPERSON CLEMENT: Which we would anticipate,  
5 hopefully.

6 MS. ROSIE: Right. And that's making more costs  
7 to get compiled together and submitted to us.

8 CHAIRPERSON CLEMENT: So, it's very possible that  
9 you could end up ranking, given the fact that your  
09:41 10 operating capital is quite low now and your income is  
11 through 2013, your claims are through 2010, so to catch --  
12 I mean, I'm just talking again, but it seems that may be a  
13 probability.

14 MR. FULTON: Right. We are looking at a short  
09:41 15 term and a longer term. Short-term is now up to June of  
16 2010. That's when all the claims have to be in and made  
17 eligible for payment. Beyond 2010, that's when there is  
18 still income coming into the State Assurance Fund but no  
19 money going out through claims. So that was -- it's kind  
09:42 20 of the built-in period that was supposed to lead into  
21 accumulating \$60 million before the Fund was terminated,  
22 taxless, associated with that fund terminating. So,  
23 that's our longer term look.

24 Short-term, is it possible we might have to rank?  
09:42 25 It is. And it's made more complicated by the transfers of

1 2010, trying to work out a sequence of transfers that will  
2 force us into ranking. Whether we will succeed or not, I  
3 don't know. I'm trying to spread out those transfers to  
4 quarterly transfers rather than a big lump.

09:42 5 CHAIRPERSON CLEMENT: Have you gotten concurrence  
6 on the quarterly transfers or any indication that may  
7 happen?

8 MR. FULTON: I know that was our proposal. I  
9 don't know that it's been approved. You read in the paper  
09:43 10 there's a constant struggle with cash flow at the State  
11 level. The Treasurer and the Legislature are looking to  
12 get us transfers as soon as possible.

13 CHAIRPERSON CLEMENT: We're already into the  
14 fiscal year, yeah, quarter.

09:43 15 You know, I don't see that this is -- this is not  
16 going in the direction one would hope it would go.

17 MR. FULTON: No. And we're not alone by any  
18 stretch.

19 CHAIRPERSON CLEMENT: No, obviously.

09:43 20 Any other questions or comments on this at this  
21 point in time from the Commission?

22 Okay. Mr. Bill Bunch, who was not able to be  
23 here, he had a last minute out-of-town trip, and he is the  
24 chairperson for the Evaluation Subcommittee, which is the  
09:43 25 committee that takes up financial issues and other types

1 of nontechnical issues that come in, and uses that more  
2 relaxed and less formal process to really work up issues  
3 with the regulated community.

4           And he prepared a one-page summary of that  
09:44 5 meeting, which was on the -- copies were there, copies  
6 were sent and provided to the Policy Commission Members,  
7 and I'm just going -- I was not in attendance at the  
8 meeting, but I have had discussions with Mr. Bunch and I  
9 do have the materials that he presented. So I will give a  
09:44 10 quick rundown of that meeting. And I think Mr. Fulton was  
11 at the meeting; is that correct?

12           MR. FULTON: Yes.

13           CHAIRPERSON CLEMENT: So, please add to as we go  
14 through this.

09:44 15           The stakeholder issues, and I think Commission  
16 issues break down into, I think, four basic categories.  
17 The first one is the financing of the short-term State  
18 Assurance Fund liability. That is those claims that will  
19 be filed will be by June 30th, 2010. And I think, based  
09:45 20 on the presentation that Mr. Fulton had and our  
21 understanding of potential future extraction of funds from  
22 the State Assurance Fund by the legislature, we may well  
23 be in a shortfall and a ranking process for payouts of  
24 those claims, ultimately. That's my concern.

09:45 25           Stakeholders themselves recommended that the

1 Commission -- to the Commission, recommend to the  
2 legislature, avoid additional transfers in this fiscal  
3 year and to encourage distributing the transfer quarterly  
4 or towards the end of the fiscal year to avoid the  
09:45 5 short-term shortfall.

6 And does everybody -- I think you all understand  
7 what that means.

8 Then the second issue that was discussed, and  
9 please jump in if there is any other points that you want  
09:46 10 to make as we're going through this.

11 Financing of long-term SAF and UST program  
12 requirements. And this is really critical. I think that  
13 there is under -- there is very little limited knowledge,  
14 I think both in the legislature and the regulated  
09:46 15 community, about essential funding -- long-term funding  
16 for this program is, because there were compromises made  
17 between the regulated community and the DEQ regarding  
18 closeout of certain types of sites that pose long-term  
19 groundwater liability. And that compromise was that DEQ  
09:46 20 would take on the responsibility of oversight and  
21 monitoring of those long-term groundwater contamination  
22 sites with the assurance that they would have additional  
23 money to undertake that function.

24 So, some of these sites that have anticipated  
09:47 25 long-term groundwater contamination have been moving into

1 a portion of the program called Monitored Natural  
2 Attenuation Program. And without funding, there will be a  
3 very difficult and potentially important environmental and  
4 public health issue that we don't understand long-term  
09:47 5 what's happening to those sites. It's a really important  
6 function.

7           The other thing I think that is underestimated is  
8 that the Department has the ability through contractors  
9 and its own staffing to undertake corrective action site  
09:47 10 characterization on its own, and that's either for orphan  
11 sites, for sites that are in various other programs,  
12 including a financial hardship program. So, as these --  
13 as owners and operators become ineligible for cleanup  
14 funds, some of those owners and operators may be eligible  
09:48 15 as a hardship case, meaning they don't have their own  
16 funding, they don't have insurance funding, to become --  
17 to put their sites under ADEQ led corrective action.

18           And I was -- I was actually one of those folks  
19 that helped write the original State Assurance Fund  
09:48 20 legislation, and I can tell you absolutely, the primary  
21 goal of that legislation was to insure that small owners  
22 and operators of underground storage tanks, particularly  
23 in the rural areas, did not become financially bankrupt  
24 because they had corrective actions in leaking tanks.

09:48 25           And for me to sit here today, I mean, this just

1 frosts me, that we would be in a situation where those  
2 owners and operators, after spending hundreds of millions  
3 of dollars, would not be taken care of when the original  
4 impetus of the program and the reason the State wrote the  
09:48 5 legislation was to take care of them is very problematic  
6 to me personally. I will just say that as emphatically as  
7 I can.

8 So, there are a number of issues that are  
9 extremely important to this State in terms of economic  
09:49 10 development, in terms of Brownsfield type projects in  
11 municipal areas, in terms of rural petroleum supplies, and  
12 in terms of being an equitable State agency relative to  
13 the commitments they've made to owners and operators of  
14 businesses.

09:49 15 And so, the long-term funding issue for me  
16 personally is very important, and I'm willing -- any other  
17 questions? I'm sorry I got on my soap box, but I really  
18 have been involved in this a long time. No other soap box  
19 comments from me today.

09:49 20 MR. FULTON: That was an excellent summary. I  
21 think you captured a lot of the summary in this report  
22 about what could -- may not happen if we don't have the  
23 money to undertake the obligations that were given us in  
24 1306.

09:50 25 CHAIRPERSON CLEMENT: You know, I mean, I will

1 take public comments in just a minute. We will go through  
2 this and then the next step will be to take public  
3 comments.

09:50 4 And then obviously, if we're going to have  
5 long-term funding, the next issue is extension -- one  
6 mechanism for that long-term funding would be extension or  
7 repeal of the -- so, to continue the one cent per gallon  
8 motor fuel tax. And perhaps that would be another issue  
9 that the Policy Commission would like to address in their  
09:50 10 comment letter.

11 There are other funding mechanisms, but certainly  
12 the one cent per gallon motor fuels tax has been, I think,  
13 a fairly painless mechanism, and it's in place now, and  
14 it's in place until the end of 2013, so, something we need  
09:51 15 to think about continuing to fund these long-term  
16 obligations of the State.

17 And then the fourth topic, which really is two  
18 subsets, one is the extension of SAF eligibility for  
19 current releases, that is releases that have been reported  
09:51 20 to the agency up until X period of time, and then the  
21 extension of SAF eligibility for future releases, those  
22 releases that have not been reported to date.

23 And we've had a number of discussions over the  
24 last, I'd say, two years regarding insurance eligibility,  
09:51 25 insurance payout, whether the financial mechanism of

1 insurance was going to be adequate to assist owners and  
2 operators once the SAF was retired. And, frankly, up  
3 until recently, we have not had a lot of information that  
4 insurance was problematic in this State.

09:52 5 Now, that picture may change over time as more  
6 insurance claims, frankly, are lodged. Insurance  
7 companies may choose not to operate here, they may choose  
8 to limit their payouts. There's a whole plethora of  
9 issues regarding insurance.

09:52 10 But we've tried to stay on top of that issue as  
11 it has become an issue to the Commission, and we've held a  
12 number of meetings. We've invited insurance agents, the  
13 Federal Government. We had a lot of interest in an  
14 attempt to put our arms around that issue and stay on top  
09:52 15 of it.

16 So, we really encourage owners and operators  
17 and those who are connected directly to owners and  
18 operators to let the Commission and the State know,  
19 through myself or Mr. Fulton, if you are having insurance  
09:52 20 issues. And our names are listed on the DEQ website, and  
21 one thing we will have to address, I think we need to  
22 update our contact information. I notice mine's  
23 incorrect.

24 But you certainly can e-mail us or phone us and  
09:53 25 we really want to stay on top of that issue as the State

1 Assurance Fund monies are retired.

2 MS. CHABERSKI: I have a question.

3 CHAIRPERSON CLEMENT: Yes.

4 MS. CHABERSKI: We talked a little bit about  
09:53 5 maybe, you know, I need something refreshed on a  
6 legislative level, and probably the audience, so I would  
7 like to talk -- and we touched on it last time --  
8 stakeholders have an idea of what they want, the  
9 Commission, you know, has an idea of how important the  
09:53 10 Fund is.

11 But can you explain a little bit, if you know,  
12 the process, when a letter goes to them or your report  
13 goes to them, do they have to take action, do they have to  
14 respond? Could you -- I'd like to kind of get an idea of  
09:53 15 what is or isn't out of control, our control, or their  
16 response. Or, for example, if the Fund goes away, can  
17 they not respond at all and the Fund just goes away? So,  
18 what can we anticipate as far as potential actions from  
19 reports and from letters from the legislature?

09:54 20 MR. FULTON: My understanding of this report is  
21 it's an information report. It wasn't necessarily -- it  
22 was to provide data that was wanted to know the  
23 liabilities of the Fund as of June 30, 2009 claims levels.  
24 It's not a response required from this. This is a -- the  
09:54 25 path of sunset has been set for 1306, so it's heading down

1 that path right now, the implementation dates that we are  
2 anticipating that we are following.

3 So, without further action, it's going to sunset  
4 as it's put forward in 1306. It would require legislative  
09:54 5 action to intervene and change that path as put forward in  
6 the statute, not through rule.

7 MS. CHABERSKI: Then some of the elements, like  
8 the transfers that were quarterly, you will find that out  
9 because they have to take action. So, those are the  
09:55 10 elements that we know about, they can take whatever action  
11 they want, you can make a recommendation, and you just  
12 have to wait and see if they're going to take the  
13 recommendation to heart or not; is that correct?

14 MR. FULTON: With regard to the timing of the  
09:55 15 transfers?

16 MS. CHABERSKI: Yeah, just things like that where  
17 they have to take an action.

18 MR. FULTON: Yes. We're being asked to propose  
19 transfer schedules that would not unduly cripple the  
09:55 20 program. Whether we can hold to that or not, it could be  
21 overcome by other realities, but that's what we've  
22 proposed to the JLBC and the Governor's Office at this  
23 point, basically taking this year's \$15.2 million transfer  
24 and cutting it into quarters and helping cycle it that way  
09:56 25 to keep our cash flow healthy.

1           So, we will get a response to that, which is to  
2 tell us when the transfers are anticipated. Could that be  
3 changed down the road? Certainly, it certainly could.  
4 So, we don't have a lot of firm footing to move forward  
09:56 5 on. We just have to react to what we have today.

6           But, with this report, we're not expecting a  
7 reply back from the Governor or the legislature, though it  
8 certainly could serve as information that could foster  
9 discussion just like we're having here, what to do, what  
09:56 10 now, what now.

11           CHAIRPERSON CLEMENT: Any other questions or  
12 comments before we take general comments from the public?

13           Mr. Findley.

14           MR. FINDLEY: This report is an annual report?  
09:56 15 Is this done periodically or is this a special?

16           MR. FULTON: This is a one-time report that was  
17 called for in the session law attached to 1306.

18           CHAIRPERSON CLEMENT: So, without legislative  
19 action, I think, given the current and future projected  
09:57 20 State deficit, it's likely that the Fund will be reduced  
21 even further than what we have here, the other variable  
22 being, we are not sure what the total amount of claims  
23 that will come in by June 30th, 2010, so there may be some  
24 off balancing.

09:57 25           But given the nature of the budgetary process as

1 it exists currently and the incredible shortfall the  
2 State's, you know, experiencing, if there aren't as many  
3 claims as we would expect, I would think they're just  
4 going to take potentially more money, so the issue will  
09:57 5 still be, you know, an important issue.

6 MS. CHABERSKI: One more question. I'm sorry.  
7 So for timing, the fiscal year starts July 1. If we  
8 recommend to keep the tax, and whatever, that would have  
9 to come forward during the next budget session, correct,  
09:58 10 in order to make a change to that, or --

11 MR. FULTON: No. The hard sunset date is  
12 December 31, 2013, or at which time the Regulated  
13 Substance Fund has \$60 million.

14 We've already talked about at length that we're  
09:58 15 not likely to get \$60 million in 2013, the next date.  
16 That's the hard date for the termination of the tax. So  
17 the driving factor, and I'm not going to speculate too  
18 much for the regulated communities, the June 30, 2010  
19 date, which is the cut-off date for the claims.

09:58 20 MS. CHABERSKI: I guess the purpose of the  
21 question was to say, if you make the recommendation, is  
22 there anything that precludes it from happening to a  
23 certain date, you know, how powerful or how much of a  
24 chance do you have, because of this process, legislative  
09:59 25 process, so, you know, are there elements that you can key

1 on that would be, you know, quicker for them to decide and  
2 respond? Am I making sense? I'm trying to figure out if  
3 we have really good recommendations but nothing can happen  
4 until a certain date, you know.

09:59

5 CHAIRPERSON CLEMENT: Well, the legislature meets  
6 what, starting in January again, so it's a legislative  
7 process. They would go through all the varying committees  
8 and lobbying, and all that. So there are two separate  
9 things here. There is an administrative process through  
10 the executive branch, which is budgetary issues, the  
11 quarterly timing, and the fiscal year transfers that would  
12 be potentially an administrative recommendation. And then  
13 there is a legislative piece of this which is all the rest  
14 of this, all of these fixed dates.

09:59

15 MS. CHABERSKI: Thank you.

16 CHAIRPERSON CLEMENT: Okay, Mr. Findley.

17 MR. FINDLEY: The other thing that comes to mind  
18 is that your projected income, of course, is based on the  
19 number of gallons of gasoline burned in the State of  
20 Arizona. Right? And that, given the current economic  
21 situation, is not necessarily guaranteed.

10:00

22 MR. FULTON: No, it's not. It's been varying.  
23 It's trending down in short-term, and, you know, from a  
24 policy standpoint, it's supposed to trend down because  
25 we're looking at alternative fuels, so it's going to be a

10:00

1 number that probably doesn't grow with time unless we have  
2 a huge population explosion. So that's the other big  
3 variable in this projection.

4 MR. FINDLEY: There might be some idea to come up  
10:00 5 with some alternative funding on an ongoing basis that  
6 wouldn't be based on gallons of gasoline. That might be  
7 something to look forward to. I don't know from the  
8 alternative fuels, I don't know whether --

9 MR. FULTON: I know ADOT's been talking about how  
10:01 10 to fund highway maintenance. Miles driven is an  
11 alternate, or something like that. We haven't really  
12 focused on that law.

13 CHAIRPERSON CLEMENT: Thank you. Okay. Now, if  
14 we have public comment, if you would just stand and state  
10:01 15 your name. And there are little cards, if you wouldn't  
16 mind filling out either before or after your comment, so  
17 that we have a record. Since this is a public meeting, we  
18 have to maintain records of those who participate.

19 Are there public comments today? I saw one.

10:01 20 MR. KEC: I will go first. My name is Bob Kec,  
21 K-E-C, and I'm the owner of Western States Petroleum, a  
22 small distributor -- petroleum distributorship here in  
23 Arizona. Started it in 1975.

24 And I just have a -- I would just like to applaud  
10:02 25 your passion for -- and your comment that you just made a

1 while back. It's essential for a company like ours that  
2 is involved with petroleum distributing throughout  
3 Arizona, and we also own and operate a couple of service  
4 stations. And without the Fund, it's really a -- it will  
10:02 5 be a traumatic blow to our company. So I just wanted to  
6 make sure that you understood from an owner/operator's  
7 standpoint, we applaud your decision to try to do  
8 something. Thank you.

9 CHAIRPERSON CLEMENT: Other comments today? Yes,  
10 sir.

11 MR. KENNEDY: My name is John Kennedy. Just to  
12 speak to the 1306 issue, I happened to be around back  
13 then. One of the first things that the fact sheet, when  
14 there was the strike all on that, was that there would be  
10:03 15 no impact to the General Fund at all. I think, Gail, you  
16 hit that on the head with the Monitored Natural  
17 Attenuation program. After that's going to go in 10 or  
18 20 years into the future, and how funding for that is  
19 going to be maintained without the General Fund  
10:03 20 contributions is very limited, if any, given our economic  
21 situation.

22 Secondly, in September of '04, the Auditor  
23 General did a report on legislation that occurred that  
24 year, and one was part of the DEQ program sunset review.  
10:03 25 In that review, they anticipated that there could be a

1 shortfall of funds. And there was a direct recommendation  
2 made in the Auditor General's report that the legislature  
3 should consider repealing the deadlines and some of the  
4 impact of 1306, should there be a shortfall, and I think  
10:04 5 we can all agree, based on Mr. Fulton's report, that  
6 that's kind of the direction it's heading, so I just  
7 wanted to make the Commission aware of that.

8 CHAIRPERSON CLEMENT: Thank you. Any other  
9 public comment today?

10:04 10 I really appreciate the attendance in this  
11 meeting. And now we'll go to the next agenda item, and --  
12 which is whether the Commission -- we had talked in two  
13 previous Commission meetings about providing comments on  
14 the ADEQ report to the Governor's Office and the  
10:04 15 legislature as a Commission. And based on our previous  
16 discussions and the Evaluation Subcommittee, I broke the  
17 issues into these four general topics so that we could  
18 take these in pieces.

19 The way the Commission has operated in the past  
10:05 20 is that we try to reach a consensus on those things that  
21 we do. If we can not reach a consensus of voting members,  
22 then we have an actual physical vote on the issue. And  
23 typically we've been able to reach a consensus. There  
24 have been some issues that are quite controversial and we  
10:05 25 have not, but that's been fairly rare since my involvement

1 with the Commission.

2           So, I'd like to talk about potential  
3 recommendation relative to the first issue under 8A,  
4 financing of short-term SAF liabilities. And I think this  
10:05 5 issue is the administrative issue. That is, do not -- the  
6 recommendation would be something similar to support of  
7 what the DEQ's recommendation, either as you're taking  
8 these funds, take them quarterly or towards the end of the  
9 fiscal year 2010, because we all have to face a reality of  
10:06 10 State budget, and I don't think that -- my personal  
11 opinion, that it would be worthwhile or recommended that  
12 we would suggest to the legislature or the Governor that  
13 don't take any funds, so -- 'cause they're stuck. We're  
14 all stuck here, and they have to find the best ways  
10:06 15 possible to deal with this budget shortfall.

16           So, that first issue really is an administrative  
17 question, primarily about how, given that you're going to  
18 take 15 plus million in fiscal year 2010, which is the  
19 year we're in, how best to do it, I think is what I would  
10:06 20 say.

21           MS. CHABERSKI: I just have a comment to back up  
22 just a little bit before we get to that. If the  
23 Commission as a whole thinks the Fund is important, and  
24 that's probably what we're saying, public health, we're  
10:07 25 looking at a map where there are orphan sites all over,

1 whatever your reason is, as a whole we agreed to that,  
2 then it's a matter of trying to figure out the best way  
3 you can to protect the money or get the monies.

4           So, we've heard additional options, and things  
10:07 5 like that. So, is it possible -- I mean, I'm not saying  
6 we say in there is everyone in support of the Fund first,  
7 because I know we're talking specifically about each  
8 issue. There may be more, there may be other options that  
9 we talk about if we all agree to support the Fund first.  
10:07 10 Am I making sense on that?

11           CHAIRPERSON CLEMENT: Yes, you are.

12           MS. CHABERSKI: You know, because we've had some  
13 creative ideas, making comments about other ways, aside  
14 from gasoline and things like that. And I guess I'm  
10:07 15 saying that because right now the economics are so  
16 horrific that people just want to stop the bleeding.  
17 That's what a lot of us are working for, whether it's in  
18 our personal checkbook or not.

19           So, I'm kind of backing out even broader things.  
10:08 20 We're all in support of doing what we can to get the  
21 monies and support the Fund. You know, this could be  
22 perfect for other recommendations, whatever, desperate  
23 actions you want to recommend to say this is really  
24 important. So am I making any sense on this?

10:08 25           CHAIRPERSON CLEMENT: Yes.

1 MS. CHABERSKI: There may be even more here that  
2 we think of.

3 CHAIRPERSON CLEMENT: Oh, there are lots more.

4 MS. CHABERSKI: I support it for whatever reason.

10:08 5 CHAIRPERSON CLEMENT: But I -- being the one who  
6 will be tasked to --

7 MS. CHABERSKI: To write the letter.

8 CHAIRPERSON CLEMENT: -- to write the letter.

9 MS. CHABERSKI: And a legislator probably isn't  
10:08 10 going to read a 20-page letter.

11 CHAIRPERSON CLEMENT: No. It's going to be a  
12 one-pager.

13 MS. CHABERSKI: And that's what I was talking  
14 about, what are the key elements that can really make --  
10:08 15 that can be really hard looked at or, you know, do all the  
16 legislators need a map that all of their areas are  
17 affected by this. I mean, it's also how you craft that to  
18 reach them to give them an eye, I absolutely agree. But,  
19 I just kind of want to make that point.

10:09 20 CHAIRPERSON CLEMENT: Good point.

21 MS. CHABERSKI: I don't know if we're going to  
22 argue over support of the Fund first or not.

23 CHAIRPERSON CLEMENT: Unless the Fund -- you  
24 know, I think the Fund as it's currently configured,  
10:09 25 meaning that the SAF pays out to a certain period of time,

1 that fund of money gets transferred to the regulated  
2 substance fund, is that what you're thinking of?

3 MS. CHABERSKI: Well, there's not much -- I don't  
4 know at the end of the SAF Fund, it is what it is,  
10:09 5 correct? So, is it a concern about the money flowing into  
6 the Regulated Substance Fund; is that correct?

7 CHAIRPERSON CLEMENT: That's one of the concerns,  
8 yes.

9 MS. CHABERSKI: Okay.

10:09 10 CHAIRPERSON CLEMENT: And speaking for myself,  
11 that's my primary concern that the Regulated Substance  
12 Fund has adequate funding for the obligations that the  
13 State has incurred and will incur.

14 MS. CHABERSKI: But the other concern we have is  
10:09 15 the short-term as far as the transfers go?

16 CHAIRPERSON CLEMENT: That is one of the other  
17 concerns.

18 MS. CHABERSKI: Okay. For the old fund, the SAF  
19 Fund?

10:10 20 CHAIRPERSON CLEMENT: Right.

21 MS. CHABERSKI: Okay. Got it.

22 CHAIRPERSON CLEMENT: And then there is, I would  
23 say, a third or fourth issue, depending on how you want to  
24 look at that, and this is not as substantive to me because  
10:10 25 there's been a lot of dates here.

1           At this point in time, there is the question of  
2 should the eligibility for accessing the State Assurance  
3 Fund be extended for current cleanup sites; second, should  
4 future sites be eligible for State Assurance Fund monies.  
10:10 5 And I think personally those are more difficult issues to  
6 grasp with at this point in time because all of the input  
7 I've received to date have been -- number one, the State  
8 did a superb job in articulating the time lines. They  
9 made incredible outreach efforts to ensure the public was  
10:11 10 notified.

11           Consulting firms, who participate in this  
12 program, have had ample opportunity to work with their  
13 owners and operators to get these sites under control.

14           We have not yet had a lot of input to the  
10:11 15 Commission or to the Evaluation Subcommittee that insures  
16 they're inadequate or unavailable. So, you know, I'm not  
17 -- I don't have information that would lead me at this  
18 junction to support extending eligibility. I just don't  
19 have the information to support that. That's me  
10:11 20 personally. That's why I tried to break these things up  
21 in a way that we could --

22           MS. CHABERSKI: So these elements are really like  
23 our focal points going forward.

24           CHAIRPERSON CLEMENT: Right. And that we could,  
10:11 25 you know, propose another Evaluation Subcommittee for

1 those elements that perhaps we're not prepared to support  
2 or may not ever be prepared to support, depending on what  
3 information comes in. I mean, I'm not trying to dictate  
4 what occurs here, but I'm --

10:12 5 MS. CHABERSKI: No. And I think these are well  
6 focused, because if you have an audience and you give them  
7 a thousand recommendations and some are so far into the  
8 future, that's -- we're kind of in a panic mode in the  
9 budget, so I think it is important to focus on and get the  
10:12 10 immediate things done that won't cripple the program and  
11 will give it some long-term funding, and things like that.  
12 But you are right, it has to be focused and concise.

13 CHAIRPERSON CLEMENT: Or they won't read it.

14 MS. CHABERSKI: Exactly.

10:12 15 CHAIRPERSON CLEMENT: And we have to be able to  
16 support it. If I don't have any input that insures it's  
17 probably safe, I cannot say the Fund is necessary for  
18 future liabilities in terms of owners' and operators'  
19 releases because there are other mechanisms available.

10:13 20 MS. CHABERSKI: Thanks for the clarification.

21 CHAIRPERSON CLEMENT: So, I guess going back to  
22 where we started --

23 MS. CHABERSKI: I'm sorry.

24 CHAIRPERSON CLEMENT: That's all right. No.  
10:13 25 This is really important, and this is probably the time

1 period that I've been involved in, one of the top three  
2 meetings we've ever had. So, you know, we've got the  
3 short-term liability issue. It appears to be primarily an  
4 administrative issue through June 30th, 2010.

10:13 5 Is there any other discussion about that  
6 particular issue? Any other questions?

7 Mr. Findley.

8 MR. FINDLEY: We've talked about the insurance,  
9 which is supposedly stepping in, the private insurance  
10:13 10 that is now supposed to be in place. Is anybody tracking  
11 those insurance claims and when and how and how often that  
12 they are being lodged and paid out?

13 MR. FULTON: We don't necessarily have access to  
14 that information. It becomes a transaction between an  
10:14 15 insurance company and the insured at that point. The  
16 assumption is, yes, private insurance will come in and  
17 take over the function of the public fund, the State  
18 Assurance Fund, and then appeals, what's paid or not paid  
19 under the insurance policies is not something we  
10:14 20 necessarily learn.

21 MR. FINDLEY: Right.

22 CHAIRPERSON CLEMENT: What we have done in the  
23 past, Mr. Findley, is we spent a lot of time with  
24 insurance companies, with subcommittee meetings on this  
10:14 25 issue, with the EPA, with others, and up -- and to date,

1 we have just not had a lot of input, and maybe this is  
2 changing, I don't know, and we're asking for that input.  
3 But we have not had a lot of input that insurance claims  
4 have been an issue in this State to date.

10:15

5 MR. FULTON: Just to be fair about what we've  
6 heard that not all claims are being paid, but not all  
7 claims are being paid under the State Assurance Fund  
8 either.

10:15

9 In this case, we have an appeal process that's  
10 well structured, and we can deal with it through the  
11 administrator or the State Assurance Fund. How those  
12 appeals are being managed under private insurance, I don't  
13 know, other than I, from some personal experience, know  
14 that sometimes it's hard to get the attention of your  
15 insurance company.

10:15

16 CHAIRPERSON CLEMENT: The critical issue that we  
17 have heard is whether it's an existing condition,  
18 basically the same thing, and prior releases versus --

10:15

19 MR. FULTON: Proving that this exists at the time  
20 the coverage window occurred. I know that's a challenge.  
21 That's been the beauty, I believe, that the State  
22 Assurance Fund is, without question, except for now moving  
23 forward, past claims, prior existing conditions weren't  
24 debated.

10:16

25 CHAIRPERSON CLEMENT: And if there were

1 preexisting conditions using health terms, in the  
2 insurance business, they should have been eligible for SAF  
3 money if they met the basic criteria of the SAF.

4 MR. FULTON: Sure.

10:16 5 CHAIRPERSON CLEMENT: I think when you get into a  
6 complicating situation is if you didn't know about it,  
7 identified a release that you believed to be a current  
8 release, and then subsequent information suggested that it  
9 had been, quote, a preexisting condition, and that would  
10:16 10 be the Catch-22 I think an owner/operator would have.

11 But, again, the other element of this is there  
12 are funding mechanisms or there should be funding  
13 mechanisms for the small owners and operators through  
14 financial determinations of the agency. There is the  
10:17 15 opportunity to participate in the State Lead Corrective  
16 Action program, also. So, I mean, it's not a dead end as  
17 to what I would say.

18 Okay. Back to the administrative piece of this,  
19 the financing of short-term SAF liabilities. I think Item  
10:17 20 1(a)(v) -- 1(a)(5), "The Stakeholders requested that the  
21 Commission recommend to the legislature to avoid  
22 additional transfers this fiscal year and to encourage  
23 distributing the transfer quarterly or toward the end of  
24 the fiscal year."

10:17 25 Is there any particular discussion or questions

1 regarding that recommendation?

2 Is there a motion -- okay. And what I'd like to  
3 set up now is the Commission's approval for -- and Mr.  
4 Bunch has volunteered to assist me in preparing this  
10:18 5 letter -- the Commission's approval to write a letter, if  
6 we approve, to address these recommendations to the  
7 legislature and the Governor's Office, so this would be  
8 requesting the Commission to vote on this specific item  
9 and potentially others as we continue the discussion.

10:18 10 So, is that clear? This would be a vote to  
11 direct Commission Chair and the Evaluation Subcommittee  
12 Chair, Bill Bunch, to write a letter to address whatever  
13 we agree should be in the letter.

14 MR. FINDLEY: Would this be in response to the  
10:18 15 report for a follow-up?

16 CHAIRPERSON CLEMENT: It would be in response to  
17 the report.

18 MR. FULTON: If I might interject.

19 CHAIRPERSON CLEMENT: Yes.

10:19 20 MR. FULTON: For reasons obvious, I won't be  
21 participating in those votes because I don't have an  
22 opinion, because our position is put forward in the  
23 report.

24 CHAIRPERSON CLEMENT: The agency wrote the  
10:19 25 report. They're not going to comment on the report which

1 makes great sense, so thank you for clarifying that.

2 MR. MIKITISH: As a public lawyer, I think it's  
3 appropriate for that that you state, in terms of follow-up  
4 letters, that won't affect your quorum. There is a quorum  
10:19 5 here, so I would simply be voting present, or abstaining  
6 from a vote, but you have the votes to move forward.

7 CHAIRPERSON CLEMENT: Thank you. Appreciate your  
8 clarification.

9 So, on this item, No. 1(a)(v), is there a motion  
10:19 10 to approve that this recommendation be included in a  
11 letter in response to the September 1st, 2009 ADEQ report?

12 MR. FINDLEY: I so move.

13 CHAIRPERSON CLEMENT: Is there a second?

14 MS. CHABERSKI: Second.

10:20 15 CHAIRPERSON CLEMENT: All in favor?

16 (Chorus of ayes.)

17 CHAIRPERSON CLEMENT: Anyone opposed? No.

18 We have -- anyone abstaining?

19 MR. MIKITISH: Yes.

10:20 20 MR. FULTON: Yes.

21 CHAIRPERSON CLEMENT: So, we will -- just to  
22 clarify, we will write a letter, Mr. Bunch and myself,  
23 that will include 1(a)(v). Okay.

24 Now let's move on to financing of long-term SAF  
10:20 25 and UST program requirements. And this is a little bit

1 more complicated 'cause there are -- let's just piece this  
2 up in two pieces.

3 Is there a motion to approve the support by the  
4 Commission of long-term funding for the obligations of the  
10:21 5 State under the State Assurance Fund and the Regulated  
6 Substance Fund?

7 MS. CHABERSKI: Motion to approve.

8 CHAIRPERSON CLEMENT: Is there a second?

9 MS. KALAGHAN: I second that.

10:21 10 CHAIRPERSON CLEMENT: All in favor?

11 (Chorus of ayes.)

12 CHAIRPERSON CLEMENT: Anyone opposed?

13 Are there two that abstain?

14 MR. MIKITISH: Yes.

10:21 15 MR. FULTON: Yes.

16 CHAIRPERSON CLEMENT: Okay. So, we have now two  
17 components to this letter that we support administratively  
18 and the methodology is listed, and that, secondly, we  
19 support a long-term funding mechanism to meet the  
10:21 20 obligations of the State Assurance Fund and the Regulated  
21 Substance Fund. Okay.

22 Now, then, let's talk about, do we want to  
23 recommend any funding mechanisms to meet those  
24 obligations?

10:22 25 MS. CHABERSKI: This is what I was thinking about

1 before.

2 CHAIRPERSON CLEMENT: Yes.

3 MS. CHABERSKI: If we're in support of long-term  
4 funding, we don't want to -- I don't know if it should  
10:22 5 come in the crafting of the letter, it may say here's some  
6 suggestions, but we're open to anything that would -- I  
7 shouldn't say we're open to anything.

8 CHAIRPERSON CLEMENT: Reasonable.

9 MS. CHABERSKI: You know what I'm getting at.  
10:22 10 You don't want to make one recommendation because that's  
11 all we can really think about right now and then shoot  
12 down everything else because someone shoots down one  
13 recommendation. So, how do you best craft it just to show  
14 -- to open up an option so that it continues. That's what  
10:22 15 I was thinking about before.

16 So, if they say no, we can't repeal this excise  
17 tax, we'll forget it, it's done. And we don't have other  
18 recommendations that we can think of right at this moment,  
19 how do you best balance that so that --

10:22 20 CHAIRPERSON CLEMENT: Well, I think one thing we  
21 could do is we could talk about potential additional  
22 mechanisms, and we could also say, here are some  
23 suggestions, but fundamentally, we believe the program  
24 should continue to meet its regulatory obligations and  
10:23 25 commitments.

1 MS. CHABERSKI: Yeah. And that's what I said, if  
2 we are going to -- here are some examples, you know, but  
3 not -- certainly not limited to this, just something to  
4 keep the obligation in place.

10:23 5 CHAIRPERSON CLEMENT: And so we obviously have  
6 the motor vehicle tax, excise tax.

7 Mr. Findley, you were talking about some ideas.

8 MR. FINDLEY: Well, I don't have anything really  
9 specific in mind, but there are obviously opportunities as  
10:23 10 new fuel sources and new transportation modes come into  
11 use in -- probably towards the end of this time period,  
12 but into the future. Alternative fuels I think would have  
13 to be on the table.

14 CHAIRPERSON CLEMENT: So, potential tax on  
10:24 15 alternative fuels or alternative transportation modes?

16 MR. FINDLEY: Yeah.

17 CHAIRPERSON CLEMENT: I'm just listening. I  
18 mean, you guys -- you gentlemen are free to participate in  
19 discussion. Is that correct?

10:24 20 MR. FULTON: Sure.

21 CHAIRPERSON CLEMENT: Any ideas from the other  
22 side of the room here?

23 MR. FULTON: Not that is directly connected to  
24 the operation of tanks as the current tax, which is fuels  
10:24 25 moving through the day. So those are the fuels that

1 resulted in releases requiring clean-up. One might argue  
2 that the amount of natural gas in a vehicle has nothing at  
3 all to do with it. That one might be one argument against  
4 expanding the base of the tax.

10:24 5 CHAIRPERSON CLEMENT: I'd rather not limit it at  
6 this time; let them limit if they so choose. I like Ms.  
7 Chaberski's comment about suggestions versus just one.

8 Is there currently a tax on each tank, annual  
9 tax?

10:25 10 MR. FULTON: There is a fee, a registration fee  
11 on each tank per hundred hours per year.

12 CHAIRPERSON CLEMENT: What does that funding go  
13 towards now?

14 MR. FULTON: It funds our inspections and  
10:25 15 compliance operation, in part. It does not fully.

16 CHAIRPERSON CLEMENT: And how many tanks  
17 approximately do we have?

18 MR. FULTON: 7000ish, so, it brings in about  
19 \$700,000 a year.

10:25 20 Let me round out that administrative fund with  
21 some of our state grants to help fund the inspection  
22 compliance. The operation of operator tanks, not the  
23 leaking side, but the UST side.

24 CHAIRPERSON CLEMENT: I don't think that that  
10:26 25 would be a particularly useful point to make.

1 Ms. Kalaghan?

2 MS. KALAGHAN: I agree.

3 CHAIRPERSON CLEMENT: Any other ideas?

4 MS. KALAGHAN: No.

10:26 5 MS. CHABERSKI: Sometimes people -- this is a  
6 psychology maybe. Some of these are status quos, are the  
7 recommendations just extensions. People aren't as afraid  
8 of something sometimes if it's status quo and it's just an  
9 extension. That's just an idea on psychology. Whereas,  
10:26 10 if you just come out with a whole bunch of stuff that  
11 we're not quite sure what the impact is, it might startle  
12 people. Once again, I think it's that fine line of what  
13 you are really trying to get across.

14 CHAIRPERSON CLEMENT: Well, we have two options,  
10:26 15 crafting this potential idea, and then one is to continue  
16 to your point just now, one is to the continuing of the  
17 current status quo, which would be the excise tax. And  
18 then the second option would be that and adding components  
19 of potential taxes. And I know this legislature  
10:27 20 particularly is very antitax, but potential tax on  
21 alternative fuels, and/or alternate transportation modes.

22 So, as a Commission, you know, one might be  
23 psychologically more preferable to the legislature in  
24 terms of a recommendation.

10:27 25 MS. CHABERSKI: I don't know either, just a

1 thought.

2 CHAIRPERSON CLEMENT: Does anybody have an  
3 opinion about that?

4 MS. CHABERSKI: I mean, honestly, I think  
10:27 5 sometimes you can make headway with what you have in  
6 place. That might be more powerful than thinking you have  
7 to start from scratch. I'm not saying we don't make  
8 recommendations, I'm just saying that you just kind of  
9 want the bang for your buck. Just a thought.

10:28 10 CHAIRPERSON CLEMENT: So, do you have a proposed  
11 motion?

12 MS. CHABERSKI: No. Just wandering thoughts, I  
13 guess.

14 No. I'm actually picturing -- you know, I'm just  
10:28 15 going from the point that, yes, you know, this is kind of  
16 status quo, people are in support, so what's the best way  
17 to communicate that without causing confusion or anger  
18 with people who have to make a decision. That's kind of  
19 my big picture of thought.

10:28 20 CHAIRPERSON CLEMENT: So, with that big picture  
21 of thought, would you recommend we include alternative  
22 suggestions for funding, or we just keep it to the current  
23 funding?

24 MS. CHABERSKI: I will turn it over. I'm not  
10:28 25 sure if it's going to have a big impact or not. But I

1 think if something is already in place and has status quo,  
2 that probably has a bigger impact.

3 MR. FINDLEY: I think you're definitely correct,  
4 that no new tax, people, you know, who would maybe be more  
10:28 5 amenable to continuing a tax, although there has been a  
6 lot of -- we've just gone through something in the  
7 legislature where something was due to expire, and the no  
8 tax people said, oh, if you extended that tax, that would  
9 be a new tax. Well, that's all in the semantics.

10:29 10 But, you're right, to the general public, I think  
11 it would go over much more easily if it's simply an  
12 extension of something that's already in place.

13 But, having said that, I think that we should, in  
14 this letter, we should be open to new possibilities as  
10:29 15 well. I don't think we should limit our -- the idea of  
16 extending funding to that one pending extension.

17 MS. CHABERSKI: Right. And I think at a minimum  
18 we should say that generally in a letter, saying these are  
19 just examples, but whatever can help to extend.

10:30 20 CHAIRPERSON CLEMENT: I've crafted a sentence,  
21 and I just want to -- 'cause we don't have a letter and  
22 we're not going to be able to vote on a letter, but it  
23 would be something to the nature of we'd recommend, and  
24 then legislature may also want to consider other funding  
10:30 25 mechanisms, such as taxation of alternative fuels, a tax

1 -- they don't like the word "tax". I'm going to have to  
2 think about that.

3 MR. FINDLEY: I would try to figure out someway  
4 rather than using the word "tax".

10:30 5 MS. CHABERSKI: We could say other revenue  
6 sources.

7 MR. FULTON: Other revenue enhancements.

8 CHAIRPERSON CLEMENT: Revenue enhancements.

9 MS. CHABERSKI: I'm sorry, I didn't want us to  
10:30 10 get into crafting the letter. I just kind of want to see  
11 the big picture. We don't want to do anything too  
12 detailed that will become offensive, then we lose the  
13 point of, this is what we support. That was just a  
14 balance. That's all.

10:31 15 CHAIRPERSON CLEMENT: So, I'm going to make a  
16 proposal here, or I'm going to ask for a motion based on a  
17 potential proposal, and that is that the letter include an  
18 element that says that we support additional -- that we  
19 support continuance of the excise tax or alternative  
10:31 20 revenue enhancements to support the program.

21 Is there a motion to approve?

22 MS. KALAGHAN: I move to approve.

23 CHAIRPERSON CLEMENT: Is there a second?

24 MR. FINDLEY: Second.

10:31 25 CHAIRPERSON CLEMENT: All in favor?

1 (Chorus of ayes.)

2 CHAIRPERSON CLEMENT: Anyone opposed?

3 Are you two gentlemen going to abstain?

4 MR. MIKITISH: Yes.

10:31 5 MR. FULTON: Yes.

6 CHAIRPERSON CLEMENT: So now we have three  
7 elements to our letter.

8 MS. CHABERSKI: And just to confirm, these are  
9 recommendations from the stakeholders at that meeting;  
10:32 10 correct?

11 CHAIRPERSON CLEMENT: So the letter will say,  
12 based on input received from the regulated community and  
13 the Commission, it will be unanimous, the voting members  
14 say something like that, so that will be clear that it is  
10:32 15 both them and us, for all of us is a better way to state  
16 that.

17 So we have that as C.

18 And then I think this one is frankly a lot more  
19 difficult to put our arms around, the extension of  
10:32 20 eligibility for current releases and the extension of  
21 eligibility for future releases, because this is really  
22 extending the SAF program into the future with -- I just  
23 don't have a lot of supportive documentation, and I know  
24 that there would be members of the regulated community  
10:33 25 strongly in favor of this.

1 MS. CHABERSKI: So, being in the past when this  
2 has occurred --

3 CHAIRPERSON CLEMENT: Fine.

4 MS. CHABERSKI: -- I was just asking about  
10:33 5 historically, I'm a new member, so I'm wondering if you've  
6 come across this bridge before and how it's been handled.

7 CHAIRPERSON CLEMENT: Well, I think in the past  
8 when we've had an issue of such importance that we didn't  
9 have a lot of definitive fact-based information, we've set  
10:33 10 a subcommittee meeting. And, in other words, you know,  
11 does insurance meet the needs. Does the financial  
12 mechanisms in place meet the needs of the regulated  
13 community. What is the responsibility of the regulated  
14 community. You know, these dates have been in place.  
10:33 15 There's been great outreach.

16 It's my perception, only mine, that some  
17 consultants were not on top of their cases and waited  
18 really until the very end of this to implement corrective  
19 actions or to propose corrective actions. So, you know,  
10:34 20 we're dealing with a number of factors, some of which  
21 could have been under the control of the regulated  
22 community and should have been under the control of the  
23 regulated community, and other factors that they may be,  
24 if you would not mind me saying this, victimized, such as  
10:34 25 insurance companies leaving the state, which I'm not aware

1 is happening. But I don't have a good handle on the  
2 impact of this particular issue on the regulated  
3 community, personally.

10:34 4 MS. CHABERSKI: Do we have a time frame on having  
5 to get this letter done?

6 CHAIRPERSON CLEMENT: My suggestion would be that  
7 we get a letter out now. We have until the next  
8 legislative session, because there's not going to be new  
9 legislation proposed, but that administrative piece, and I  
10:35 10 think also the general sense that we support funding  
11 should be out now.

12 And then we have until the next legislative  
13 session to work with our subcommittees to get our arms  
14 around these other issues, and that's what I would  
10:35 15 propose, because I just don't have a fact basis to make a  
16 recommendation.

17 MS. CHABERSKI: It seems reasonable to me.

18 CHAIRPERSON CLEMENT: Do you have any thoughts?

19 MS. KALAGHAN: I think that we should have a  
10:35 20 subcommittee meeting and invite the regulated community  
21 and stakeholders to come in before we go anyplace else  
22 with it.

23 CHAIRPERSON CLEMENT: Okay. So our  
24 recommendation to Mr. Bunch will be to hold -- and I would  
10:36 25 ask that as many -- now that I'm out of the area, it's a

1 little more difficult for me to participate in  
2 subcommittee meetings. But I would really ask that as  
3 many members of the Commission participate in this next  
4 Evaluation Subcommittee as possible. And I would also ask  
10:36 5 the regulated community to really get a fact base together  
6 to support, if you want to support eligibility extensions,  
7 that would -- it's not just, gee, we're going as a  
8 consultant, it's not just, gee, we're not to have as much  
9 business, we're not going to have as many SAF claims,  
10:36 10 that's not going to hold water. You know, that's just the  
11 nature of business. You know, one has to be responsive to  
12 that.

13 But if there are truly situations that are of a  
14 general nature that are not going to be able to be met by  
10:36 15 insurance or other state mechanisms, if those mechanisms  
16 are properly funded, we really want to know about that.  
17 But they have to be a fact base. It can't be just one  
18 site. We have to have a general idea that this is  
19 occurring in the State, and then we can be very responsive  
10:37 20 to that if we have a fact base to work with.

21 So, I don't think -- I think we decided at the  
22 last meeting we don't need to vote. I can assign a  
23 subcommittee to hold subcommittee meetings and I can  
24 assign topics for those subcommittee meetings, and with  
10:37 25 the consensus that we talked about today, that will be met

1 with Mr. Bunch after this meeting.

2           These legislative proposals all typically get  
3 crafted before the session actually starts. It's almost  
4 like baking bread and things bubble up and rise to the  
10:37 5 interest of the legislature. So I would suggest that  
6 sometime in October, November time frame we have this  
7 Evaluation Subcommittee.

8           We have our December meeting to discuss the  
9 outcome of that and potentially vote on a recommendation  
10:38 10 to the legislature at that point regarding those issues.

11           I think we're done with this.

12           Any other points on this topic that we'd like to  
13 cover?

14           Next we're going to move really quickly through  
10:38 15 this. The next is the technical subcommittee update.

16           MS. CHABERSKI: We didn't have a meeting, and I  
17 have no agenda items. I don't think Terry does either.

18           MS. KALAGHAN: I have no agenda items.

19           MS. CHABERSKI: So nothing to report at this  
10:38 20 time.

21           CHAIRPERSON CLEMENT: Okay. We had a general  
22 call to the public previously. If there are other public  
23 comments at this point, please let us know. Just stand up  
24 and give your name and your comment. If not, we will move  
10:38 25 forward.

1           Okay. Summary of meeting action items. And this  
2 is actually very important because we're not meeting until  
3 December, unless something big happens and I have, again,  
4 per our last meeting, the authority to change that timing,  
10:39 5 I would ask the State a couple of things.

6           Would it be possible, Mr. Fulton, if, instead of  
7 having these meetings, we continue to get the data updated  
8 that you report out, the State Assurance Fund monies, the  
9 State Assurance Fund claims, the LUST statistics,  
10:39 10 particularly the timing of those reviews that you've just  
11 incorporated?

12           MR. FULTON: It is very possible --

13           CHAIRPERSON CLEMENT: Okay.

14           MR. FULTON: -- that we could distribute to  
10:39 15 Commission Members by e-mail and post on our website the  
16 same reports on a monthly basis.

17           CHAIRPERSON CLEMENT: That would be excellent,  
18 because I think we want to stay on top of this and then  
19 that also causes the State to focus, you know, their  
10:40 20 attention on what's actually occurring as this phaseout  
21 goes into place.

22           MS. CHABERSKI: Can they also include any  
23 response, you know, about quarterly transfers, anything  
24 that you refer is a hot topic that's public?

10:40 25           MR. FULTON: I don't suppose passing out

1 information is -- that doesn't conflict with any of the  
2 open meeting requirements as long as we don't take action  
3 on the same bits of information. Is that correct, Joe?

4 MR. MIKITISH: That's correct.

10:40 5 MR. FULTON: So, yes.

6 CHAIRPERSON CLEMENT: That's excellent. Okay.

7 You were also going to provide a notice to the  
8 Policy Commission regarding your guidance for risk  
9 assessments and your workshops that you are going to  
10:40 10 produce for risk assessments, and then obviously to the  
11 regulated community, because that is going to be a hot  
12 topic, as time goes on, and we have had a history, as  
13 those who have been participating in these meetings, that  
14 was unpleasant in the past, so we really want to stay on  
10:41 15 the risk assessment issue.

16 MS. CHABERSKI: Can I ask a general question on  
17 workshops? Does DEQ have video capabilities, do video  
18 conferencing?

19 MR. FULTON: We have some capability.

10:41 20 MS. CHABERSKI: I know some people can be in  
21 their office. I'm just wondering if that might reach more  
22 stakeholders that don't have to physically come to a  
23 workshop. It was just a thought.

24 MR. FULTON: Our intent is to make the guidance  
10:41 25 as understandable as possible, and also on the website.

1 We're not looking at a major modification to the guidance  
2 document. We're making sure that data requirements are  
3 known in advance to those who might be looking at risk  
4 assessments as an option. That's been part of our big  
5 quandary.

6           There is some that might object, it looks like a  
7 moving target. I think that's what we need to do is to  
8 clarify in writing what our expectations are for data  
9 input support, risk assessment, and discuss that in  
10:42 10 advance in creating that guidance.

11           The workshops would be an avenue for us to  
12 interact with -- one of the avenues to interact with the  
13 regulated community. I think one of our more powerful  
14 ways of getting that information is the one-on-one site  
10:42 15 facility meetings that we still have, as requesting that  
16 is encouraged by the newspapers.

17           MS. CHABERSKI: It's not going to be an end all.  
18 I was just curious, you know, if it's appropriate for what  
19 we're trying to get across, if you have the technology for  
10:42 20 that.

21           MR. FULTON: We do. We have capabilities of  
22 doing video conferencing.

23           MR. FINDLEY: Or just audio conferencing, just a  
24 dial-in, so that people could listen. It would not  
10:43 25 necessarily be in the way, just so that people from Globe

1 could dial in and hear the dialogue.

2 MR. FULTON: E-mail out, handouts, and things  
3 like that, so welcome to the 1990s; right?

4 CHAIRPERSON CLEMENT: And then the last item I  
10:43 5 had in terms of what was going to be done, our action  
6 items, was that Mr. Bunch and I were going to prepare a  
7 letter in response to the September 1st, 2009 report based  
8 on the decisions made and unanimity by the Commission  
9 today with the two abstaining, except for the two  
10:43 10 abstaining members.

11 So, on that, does anyone have any agenda items  
12 for our next meeting now? If you do, let me know, or  
13 always e-mail me directly anything -- you know, I do not  
14 filter our agenda. If it's of interest to a Commission  
10:44 15 Member, it's going to be on the agenda.

16 And so, our next -- we are now moving to  
17 quarterly meetings. And the next Policy Commission  
18 meeting is scheduled for December 16th, 2009, at 9 a.m. in  
19 this room, and I do not believe there will be a November  
10:44 20 Technical Subcommittee meeting because there are no agenda  
21 items. Is that correct?

22 MS. CHABERSKI: Not to date.

23 CHAIRPERSON CLEMENT: So that item under  
24 announcements, 13-B, is irrelevant because there will be  
10:44 25 no meeting.

1 I will work with Mr. Bunch and we'll get a date  
2 set as soon as possible for the Evaluation Subcommittee  
3 meeting so we can discuss that very substantive item  
4 regarding extension of potential eligibility, potential  
10:44 5 extension of eligibility.

6 And with that, if there are no other comments or  
7 topics -- there are no other topics and no other ideas at  
8 this point, the September 23rd, 2009 UST Policy Commission  
9 meeting is adjourned.

10:45 10 Thank you all.

11 (10:45 a.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

4

5

## C E R T I F I C A T E

6

7

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

13

14

DATED at Phoenix, Arizona, this 23rd day of September, 2009.

15

16

17

18

19

20

21

22

23

24

25

  
Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477