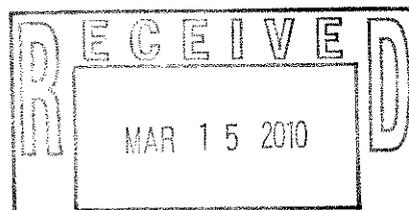


ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
January 11, 2010
9:00 a.m.

Location: 1110 W. Washington
Room 3175
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

(COPY)

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 DECEMBER 16, 2009 MEETING	5
3. ADEQ UPDATES	5
4. SAF STATUS	8
5. EVALUATION SUBCOMMITTEE UPDATE	16
A. DECEMBER 3, 2009 SUBCOMMITTEE MEETING	19
B. EXTENSION OF THE SAF CLAIMS SUBMITTAL DEADLINE FOR EXISTING SAF ELIGIBLE RELEASES	20
6. GENERAL CALL TO THE PUBLIC	21
7. SAF RECOMMENDATIONS LETTER	17
8. SUMMARY OF MEETING ACTION ITEMS	95
9. DISCUSSION OF AGENDA ITEMS AND SCHEDULE FOR NEXT COMMISSION MEETING	95
10. ANNOUNCEMENTS:	
A. NEXT POLICY COMMISSION MEETING IS SCHEDULED TO BE HELD ON JANUARY 27, 2010 AT 9:00 A.M., IN ROOM 250 AT ADEQ LOCATED AT 1110 W. WASHINGTON, PHOENIX, ARIZONA	95
11. ADJOURN	96

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, Chairperson

Michael Fulton

Bill Bunch

Tamara Huddleston, Esq.

Jon Findley

Karen Gaylord, Esq.

Theresa Kalaghan

Amanda Stone

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

2
3 CHAIRPERSON CLEMENT: Good morning. We have a
4 quorum now for the January 11th, 2010 UST Policy
09:04 5 Commission meeting, so this will be a call to order and
6 I'll start on my left.

7 We have two representatives from ADEQ here today.
8 As I think you all know, Mike Fulton has been awarded the
9 responsibility of Director of the Office of Water Quality
09:04 10 and will be leaving the UST program. And Amanda Stone,
11 who has a great background from the UST program and has
12 been the Waste Program Director for --

13 MS. STONE: Four years.

14 CHAIRPERSON CLEMENT: -- four years, will be
09:05 15 taking over for Mike, so we're graced with both of them
16 today.

17 So, if you would start on the left, Amanda, and
18 just state your name.

19 MS. STONE: Amanda Stone, Director Waste
09:05 20 Programs, ADEQ.

21 MR. FULTON: Mike Fulton, DEQ.

22 MS. KALAGHAN: Theresa Kalaghan, Stantec.

23 CHAIRPERSON CLEMENT: Gail Clement.

24 MR. FINDLEY: Jon Findley.

09:05 25 MR. BUNCH: Bill Bunch, Circle K Stores.

1 MS. GAYLORD: Karen Gaylord.

2 CHAIRPERSON CLEMENT: Okay. Happy New Year
3 everyone. I know this is an important meeting, and we're
4 going to keep this rolling today.

09:05 5 The main agenda item is obviously the State
6 Assurance Fund, but before we get into that topic, we're
7 going to have a brief overview of the status of the
8 program from ADEQ. And there was a handout in the back,
9 if you haven't already received it, and I'm going to --
09:05 10 oh, before we do that, we do not have yet the
11 December 16th meeting minutes, so we are going to -- we're
12 going to move on past that agenda item, so we'll deal with
13 that at our next meeting.

14 So, now I will turn over the program to Mr.
09:06 15 Fulton, and he will provide some brief ADEQ updates.

16 MR. FULTON: Okay. I don't want to dwell too
17 much on the regular, but I know we're going to have
18 probably another meeting in January. This is where we
19 usually present our program statistics.

09:06 20 The first handout being the pie chart, I believe
21 we looked at. We tallied the numbers of facilities
22 closed, and the total number of facilities remaining with
23 open LUSTs, still around 500.

24 Our pending review documents in January, about
09:06 25 20. And one of the more important tracks that we have on

1 the bottom of that page is our time frames as we've been
2 seeking ever to tighten and shorten those time frame
3 reviews as we've moved through toward sunset of the Fund.

09:07 4 Nothing over -- we have a few things pending over
5 60 days, and we will be talking to Joe about these and
6 what we have on the table, what kind of time frames we're
7 looking for for approvals.

8 Again, the big emphasis on that was to try to
9 increase not only review time frames, but also the
09:07 10 interactions with the claims to get our approval documents
11 done.

12 Second sheet on there is our federal stimulus
13 money. As a reminder, we received about \$3.2 million in
14 stimulus funding --

09:07 15 (Ms. Tamara Huddleston enters the meeting room.)

16 MR. FULTON: -- as of probably last week.

17 How recent are these numbers, Ron, do you know?

18 MR. KERN: I think they're pretty good. I mean,
19 they're very, very close, if they're not right on.

09:08 20 MR. FULTON: Or our last report for the quarter.

21 CHAIRPERSON CLEMENT: Excuse me for just one
22 second. I want to note that Tamara Huddleston has joined
23 the meeting. Thank you.

24 MS. HUDDLESTON: I'm sorry, I went to the wrong
09:08 25 room.

1 CHAIRPERSON CLEMENT: Welcome. Happy New Year.

2 MR. FULTON: We've obligated over 75 percent of
3 that amount of money. We come under contract with
4 contractors to do that work under our State Lead Program
09:08 5 and have spent about 14 percent of that to date.

6 So, various informations. Again, I will remind
7 people if they want to know what those sites are that
8 we're working on, that's on our website, prominently
9 displayed on the DEQ website on the DEQ stimulus page.

09:08 10 So, any questions about that corrective action
11 portion of the report?

12 CHAIRPERSON CLEMENT: Any questions or comments
13 to Mr. Fulton? No.

14 MR. FULTON: And then the State Assurance Fund
09:09 15 report, which is the bar chart. Again, we use that to
16 track numbers of claims received and interim
17 determinations made, and we see a bit of an increase in
18 December over November, but not so far out of line with
19 the rest of the trends for the year. Still getting in --
09:09 20 it looks like we got in about 24 claims in December, and
21 so we haven't really seen a huge spike in the numbers of
22 claims. I don't know if our sizes of claims have really
23 increased or not.

24 Tara, do you have any --

09:09 25 MS. ROSIE: They're pretty consistent.

1 MR. FULTON: So we haven't seen huge claims come
2 in, but certainly seen some old work come in for
3 reimbursement requests as the sunset approaches and the
4 June 30, 2010 date comes closer.

09:10 5 This gets into the State Assurance Fund status
6 update if you want to go to that next page.

7 CHAIRPERSON CLEMENT: Please.

8 MR. FULTON: On an updated sheet we just handed
9 out, this was on the table, showing our status as of
09:10 10 November 30, I want to talk about what hasn't been updated
11 on here, which will be updated by the January meeting.

12 There are a couple of things that have happened
13 since this sheet was put together, and if we recalled back
14 a couple of meetings, we talked about the possibility of a
09:10 15 15 percent budget reduction that the Governor asked each
16 department to put together and the impacts that we might
17 have been facing if that was implemented.

18 Well, that hasn't materialized, but what has
19 materialized since that time was Senate Bill 1001, which
09:11 20 came out of the fifth special session of the legislature
21 just mid December, I believe.

22 The transfers from the Fund, from the UST Fund
23 prescribed in that legislation was right around
24 \$3.3 million, so, the reflection here is fairly simple.
09:11 25 If you look at Item B on this sheet, the total estimated

1 transfers still in FY-10 at 15.2, add 3.3 to that, and you
2 can see the projected ending balance starts getting pretty
3 small. So, instead of 3.9, it will be something in this
4 guesstimate, around 600,000.

09:12 5 As we approach -- as we continue our way through
6 the year, we might revise our projected expenditures.
7 This is pretty sensitive to that, so whether we're going
8 to actually expend \$29.7 million this year is -- this is
9 one of those things that's always a question as we work
09:12 10 our way through the year, but we will get an updated one
11 for January's meeting, the January 27th meeting.

12 The takeaway lesson I think from it is that the
13 continuing transfers are making it harder and harder for
14 us to avoid the possibility of claims ranking. We talked
09:12 15 about that before very openly at the Commission. We're
16 preparing to do claims ranking if we have to. We're not
17 having to rank claims right now, but as transfers pile on
18 and as our revenue predictions might be changing as well
19 as gas prices rise and additional claims come in on the
09:13 20 expenditures side, it's getting tighter and tighter. Our
21 ending balances are getting smaller toward the end of the
22 year, which makes it pretty hard to argue against that as
23 being inevitable.

24 So, we haven't put out a notice of ranking, but
09:13 25 it's something we're discussing. I don't want to put a

1 run on the bank, but it's important for us to be as open
2 as we can about what's going on. And then the other
3 unknowns as the session begins, I don't know what that
4 holds for the Fund as we go forward, and I think that's
09:13 5 part of what we wanted to talk about here today.

6 CHAIRPERSON CLEMENT: Question for you, Mr.
7 Fulton. Is the additional 3.3 million, that's a 2010
8 transfer?

9 MR. FULTON: That is out of 2010.

09:14 10 CHAIRPERSON CLEMENT: Okay. So that's a 2010.
11 So we don't know what the 2011 transfer's going to be yet?

12 MR. FULTON: No. No. That's still to come. All
13 these special sessions that we've been through, one
14 session, so, one through five have been coming back to the
09:14 15 2010 budget, further cuts, further cuts, further cuts.

16 CHAIRPERSON CLEMENT: If you wouldn't mind, could
17 you refresh my memory regarding the projected expenditures
18 and income? Is that a fiscal year or is that calendar
19 year?

09:14 20 MR. FULTON: Those are all fiscal years, so these
21 are on the same basis, yes.

22 CHAIRPERSON CLEMENT: Okay. So it would appear
23 that there's going to be potentially a 600 and some
24 thousand dollars at the end of all of this?

09:14 25 MR. FULTON: I would do that as the bottom

1 number. I think our expenditures, if we look at history,
2 haven't always been as large as we might have projected at
3 the end of the year. We are going to further refine those
4 now that we're quite a ways through the year and update
09:15 5 those for the January 27th meeting.

6 But in the general magnitude of things, yes, our
7 margin for error at the end of the year is getting smaller
8 and smaller and smaller. Being able to pay claims as they
9 come in is one of those things that we have to look at
09:15 10 real hard and how we're going to be able to do that
11 without ranking, it's getting harder to picture it not
12 happening. So, that's what we're working on talking about
13 internally here.

14 CHAIRPERSON CLEMENT: What is your cash flow
09:15 15 situation right now, cash on hand, that provides you a
16 bumper? Do you know what that is in the Fund?

17 MR. FULTON: What do we have in the Fund, the
18 balance right now?

19 CHAIRPERSON CLEMENT: Yes.

09:15 20 MR. FULTON: They've been ending -- we're ending
21 month with around \$6 million in the bank. Money in, about
22 2 million a month, and money out about 2 million a month.
23 So, the money that has to be -- remember, what comes out
24 of that fund is not only claims, but there's admin costs
09:16 25 associated with that.

1 CHAIRPERSON CLEMENT: Do you know when they're
2 going to take the 3.3 million?

3 MR. FULTON: That's what we're talking about
4 right now, the timing of that transfer that was described
09:16 5 in Senate Bill 1001. Remember, there are still transfers
6 that are accumulating to reach the 15.2 that's on that
7 sheet as well. The timing of that, we're trying to work
8 to cash flow the fund so that we don't hit rock bottom,
9 but it's getting harder and harder to do as we go through
09:17 10 the fiscal year.

11 CHAIRPERSON CLEMENT: Is your perception that --
12 is your perception that they are sensitive to the cash
13 flow situation in the SAF, or more sensitive to the cash
14 flow situation in the overall budget?

09:17 15 MR. FULTON: I think the latter, the overall
16 budget, and each department has been given, I know, some
17 leeway to try to propose transfer time frames for all the
18 funds in their departments. And UST is certainly a big
19 one for us, trying to -- when the calls for the money are
09:17 20 going to come in earnest, I don't know. And that's what
21 we're trying to work with the Governor's Office and JLBC
22 on that.

23 CHAIRPERSON CLEMENT: Thank you.

24 Ms. Gaylord.

09:17 25 MS. GAYLORD: Have any of the transfers that have

1 occurred to date, including the 3.3, been characterized?

2 MR. FULTON: Not to my knowledge. The permanent
3 discussion came out of -- that was the framework of the
4 15 percent plan that the Governor asked each executive to
09:18 5 do, which was to come up with 15 percent permanent
6 expenditure reductions. That plan hasn't been
7 implemented. The legislation in the special sessions were
8 one times for FY-10. FY-11 will start over.

9 CHAIRPERSON CLEMENT: Karen.

09:18 10 MS. GAYLORD: On that 2010, how much gap remains
11 for them to get through for 2010 before we even look at
12 2011?

13 MR. FULTON: No, I haven't read the paper today.
14 It was -- was it -- it's three billion something, so it's
09:18 15 a the lot of ground to still make up.

16 MS. GAYLORD: So, it's possible we're either
17 going to have temporary or permanent transfers still
18 coming out of the next month for 2010, before we even look
19 at 2011?

09:19 20 MR. FULTON: It could be. I wouldn't say
21 anything is off the table from what we've seen over the
22 past six months, so it's all possible.

23 MS. GAYLORD: And is the 15 percent permanent
24 reduction still in play, then?

09:19 25 MR. FULTON: It's still out there. I don't know

1 that it's -- it wasn't -- proposals by the executives,
2 they weren't necessarily reflected in Senate Bill 1001,
3 not really very much at all. If you recall, the
4 Department had proposed a larger transfer from UST Fund
09:19 5 than 3.3, and Senate Bill 1001 came in very differently,
6 but I don't know. I think the 15 percent plan was
7 intended to spark some discussion, but I don't know that
8 it's still in play or not, so, sorry, I don't have that
9 information.

09:19 10 CHAIRPERSON CLEMENT: Any other questions for Mr.
11 Fulton, any comments?

12 Anything else, Mr. Fulton, on that?

13 MR. FULTON: I don't know if Amanda has anything
14 to add.

09:20 15 I'm feeling a little bit like Captain Smith here
16 when the bird was hit. Here comes Amanda. Make sure the
17 band keeps playing.

18 But I don't want to be too flip about it, but
19 every fund in our department is at the edge, and we're not
09:20 20 unique by any stretch statewide. Every State department
21 is really being hit, and I don't know if you've read, but
22 the Department of Water Resources laid off 45 -- 47 people
23 last week, Thursday. That's almost a quarter of their
24 workforce. So, there's very real personal impacts from
09:20 25 the funding cuts now, and I think you've read in the paper

1 all the easy stuff has been done, now it's really going to
2 get interesting, so...

3 CHAIRPERSON CLEMENT: I did have a follow-up
4 question. Have there been any staff reductions other than
09:21 5 attrition?

6 MR. FULTON: At the Department of Environmental
7 Quality?

8 CHAIRPERSON CLEMENT: Yes.

9 MR. FULTON: Not recently, no. We had -- last
09:21 10 summer we did some staff reductions. I think I described
11 that in -- what month did -- what was that?

12 MS. STONE: June.

13 MR. FULTON: End of June, so probably in July I
14 reported that. We had three or four positions within,
09:21 15 that were SAF funded, result in some layoffs. So, is that
16 a possibility going forward? As I said before, everything
17 is a possibility going forward.

18 CHAIRPERSON CLEMENT: Okay. That's pretty grim.

19 MR. FULTON: It is very real now.

09:21 20 So, that is all I have on the Assurance Fund.

21 CHAIRPERSON CLEMENT: Okay. I think the
22 underlying theme here is, if you have claims outstanding,
23 it would be in everyone's best interest to get them in
24 sooner rather than later.

09:22 25 MR. FULTON: I'll agree. I think we've been

1 trying to emphasize at every meeting here, don't be a --
2 I'm not convinced there's a whole lot that hasn't been
3 submitted to us out there. There is a lot of work yet to
4 be done. I don't think there are a lot of people holding
09:22 5 onto claims, but I might be wrong, but we've been coming
6 out with this message every month, and I think those that
7 are really in touch have been sending in their claims as
8 they've been generating them and we've been doing a good
9 job of turning them around so we don't have a big backlog.

09:22 10 CHAIRPERSON CLEMENT: Well, thank you very much.

11 I am going to now turn to Mr. Bill Bunch. He's
12 our Chair of the Evaluation Subcommittee, and I know there
13 was a meeting on December 3rd.

14 MR. BUNCH: Correct.

09:23 15 CHAIRPERSON CLEMENT: And there was some
16 follow-up discussions subsequent to that also, but perhaps
17 you could give us an overview of the status of that.

18 MR. BUNCH: Certainly. And actually I think what
19 I ought to do is probably step back a little bit further
09:23 20 than that. I wish I could claim that I went to the wrong
21 room the last Policy Commission meeting, but I don't have
22 that good of an excuse.

23 We were tasked, the Evaluation Subcommittee, of
24 addressing the State Assurance Fund Liabilities Report
09:23 25 that DEQ published on September 1st, 2009. So, in early

1 September, we had an Evaluation Subcommittee meeting and
2 talked about what that letter meant and what the status of
3 the State Assurance Fund meant. With respect to long-term
4 program funding, we talked about a lot of things in that
09:23 5 meeting. And out of that meeting came a list of
6 discussion points that was voted on in the subsequent
7 Policy Commission meeting, and I believe a letter went out
8 to the legislature basically advocating an extension of
9 the one-penny-per-gallon excise tax in an appeal to them
09:24 10 to avoid any more transfers this fiscal year so that we
11 wouldn't end up having to risk rank our claims.

12 Once that letter came out, I started receiving
13 feedback from the regulated community or interested
14 stakeholders, basically concerned about other issues
09:24 15 related to the SAF, primarily, on claims that were -- or
16 releases that were eligible for SAF reimbursement, i.e.,
17 they were submitted before the deadline in 2006, but for
18 whatever reasons, corrective action had been delayed, and
19 there was a concern that corrective action would not be
09:24 20 completed before the deadline for submittal of claims.

21 So, those sets of issues have come up and that's
22 really the point of discussion for today.

23 Would this be a good time for me to hand out the
24 letter?

09:25 25 CHAIRPERSON CLEMENT: Yes.

1 MR. BUNCH: We have kind of a draft letter that
2 was authored by a third party, and the intent today is to
3 use this more as a talking point instead of talking
4 points.

09:26 5 CHAIRPERSON CLEMENT: And I just want to
6 interrupt for just a second. We distribute everything
7 that the Commission receives to the public. And we have
8 received letters in favor of extending the SAF
9 eligibility. We've received comments in favor of
09:26 10 extending the payout period. We've received comments not
11 in favor of either of those. So, whenever the Policy
12 Commission gets a written document, we make that available
13 to the public.

14 This is not our letter, however, it was drafted
09:26 15 as if it would be our letter, and I just want to make that
16 very clear. This is not a draft that was developed by the
17 Policy Commission, it's a draft that was developed by a
18 member that represents the regulated community, and it's
19 very well written, and I appreciate the level of effort
09:26 20 and the intention of allowing the Commission to use this
21 as a talking piece.

22 And the Commission will go through this and vote
23 or discuss on individual items, but this is not our letter
24 at this point in time, and I just want to make that very
09:27 25 clear.

1 The Commission does everything in a public
2 process and there is no other work that is done. It has
3 to be done in a public process. But we are using this
4 letter as a talking point because it was put together for
09:27 5 our benefit and it is, frankly, well written. So, thank
6 you.

7 MR. BUNCH: Thank you very much.

8 So, in the December 3rd Evaluation Subcommittee,
9 we started talking in more detail about specific concerns
09:27 10 that some of the responsible parties, who are trying to
11 get their corrective action completed in time, had brought
12 up some of their obstacles.

13 And so I'm just going to briefly summarize some
14 of the feedback that I received, and then, Gail, I'm not
09:28 15 sure if it would be appropriate at that point for us to
16 discuss or you might want to open a call to the public for
17 open discussion.

18 But some of the issues that were brought up, you
19 know, apparently the intent behind 1306 was to provide
09:28 20 sufficient time for owner/operators and volunteers to
21 characterize and to get their corrective action completed.
22 I think most folks would agree that that was the intent
23 when that legislation was written.

24 Some folks have brought up issues around just
09:28 25 some administrative and logistical and economic hurdles.

1 Without going into a lot of detail, some folks just
2 frankly didn't have the resources, based on the economy.
3 There is issues around permitting in some municipalities,
4 unforeseen obstacles, technical obstacles in getting
5 corrective actions completed.

09:28 6 So, basically, the appeal was, if we're going to
7 extend the excise tax, which seems to make sense for the
8 legislature and those who have to make the budget work,
9 stakeholders would probably be more inclined to support
10 that effort if their eligible claims were allowed to be
11 extended until corrective actions were completed.

12 We've received letters from the City of Tucson
13 indicating that they've had some issues. I think that's a
14 matter of public record. But they were appealing for an
09:29 15 extension allowing them to complete corrective actions and
16 still submit those claims and to have them be reimbursed.

17 We've seen some folks basically indicate that
18 they weren't in support of additional time in general, but
19 I think that letter did indicate that perhaps if the
09:29 20 Department were given some leeway or they had the
21 subjective ability to evaluate the hardship claims and
22 whether a good faith effort had been made, the
23 recommendation was to allow for an extension in those
24 situations.

09:30 25 So, I think that's pretty much a good summary of

1 the concerns, at least those that were expressed to me.

2 Gail, I don't know now if we debate this
3 internally or if we open the call to the public.

4 CHAIRPERSON CLEMENT: I tried to make the agenda
09:30 5 as flexible as we could make it and get public input at
6 this point before the Commission actually debates this
7 issue so that we could hear from the interested parties in
8 the room today in addition to the written materials that
9 we've received.

09:30 10 So, I am going to call general comments now
11 regarding this issue, and then the next agenda item will
12 be for the Commission itself to debate or to discuss the
13 components of the potential extension, or not, but I do
14 think it's important that we hear from you before we have
09:30 15 that discussion.

16 So, the floor is open. If you would -- were
17 there forms in the back?

18 Two things, when you stand up, please identify
19 yourself and the organization you're with, and then if you
09:31 20 have a public comment, please fill out the form so we can
21 keep track of the comments.

22 So, are there any comments today that people
23 would like to provide the Commission?

24 Mr. Pearce.

09:31 25 MR. PEARCE: Well, if I'm here, you know I'm

1 going to comment about something, I suppose.

2 My name is John Pearce and I'm with the law firm
3 of Fennemore Craig. I've been active in the UST program
4 for about 20 years and appreciate the chance to comment.

09:31 5 We represent a number of people that are very
6 much in favor of the extension of the deadline to submit
7 claims to the Fund. I have not seen this City of Tucson
8 letter. I was not aware that they were writing one, but I
9 think it hits on the main point, and that is the time
09:32 10 frame with sites in the UST program can vary. The City of
11 Tucson letter mentions that it can be lengthy and
12 unpredictable, and that's just been my experience over the
13 years with Underground Storage Tank program sites.

14 I think that that's one of the reasons that we're
09:32 15 in the situation now. As the draft letter that Mr. Bunch
16 distributed indicates, the deadline of June 30, 2010 was
17 established in 2004 as an estimate, a reasonable date that
18 that would allow for completion of cleanup at the
19 universal sites that were to be projected. It was a window,
09:32 20 an estimated window, and that window worked in many cases,
21 and the Department's made wonderful progress in closing a
22 number of sites and getting them off the books and
23 completed before that deadline. And then some sites it
24 just hasn't happened that way, and people are stuck where
09:33 25 they're going to be in an ongoing situation to complete

1 their Underground Storage Tank site after 2010, and that's
2 in certain situations largely where you have a complicated
3 site that simply takes longer to get them done.

4 On occasions there is technical, very detailed,
09:33 5 complex technical factors that go into a site, where the
6 Department may have a round or two rounds or three rounds
7 of comments, which people here have had that experience.
8 That is not a critique of the Department, it's just the
9 way some projects work. There is a lot of money involved
09:33 10 and people want to make sure they're on the same page and
11 the Department wants to make sure that it's correct. It
12 all takes time. It is an administrative process that adds
13 to the time to complete a UST program site.

14 Finally, there's a lot of people out there that
09:33 15 do sites, that fund the remediation of their sites in an
16 incremental fashion. They do that by necessity, because
17 they do not have the money to bank roll a \$500,000
18 cleanup. Imagine if you had an underground storage tank
19 site and you were the owner/operator responsible for it.
09:34 20 You can't just hire a consultant if you're of moderate
21 means and say, okay, I'm just going to go ahead and pay
22 you to complete this project, get it done as quickly as
23 you can. You would need to protect your own interests to
24 go about it in a fashion where you pay what you can to the
09:34 25 consultant to perform a phase of work, get it blessed by

1 the Department, and then pursue the work, get it
2 completed, and then get it reimbursed from the Department
3 on a reimbursement application. And then after you get
4 the reimbursement, you then have the funding to move on to
09:34 5 the next phase of the work. It's an orderly process, it's
6 a well-designed process, it's a process the Department has
7 very, I think, quite rightly set up to allow people of
8 moderate means to complete processes and get it done.
9 That process takes longer than it would take a major oil
09:34 10 company, for example, to just go ahead and blast through
11 the project and complete it and get reimbursed in big
12 chunks, or maybe in one chunk towards the end of the
13 project.

14 So, what you are seeing are people with moderate
09:35 15 means, one or two of them here right now, that are
16 business people that go through the process to
17 incrementally conclude a site, and because that takes more
18 time, they are also in situations where this window may
19 not allow them enough time.

09:35 20 Those are the circumstances I'm familiar with. I
21 think those are good reasons to go ahead and extend the
22 deadline.

23 I think the letter is well prepared. The reason
24 it's important to get this letter -- I didn't prepare it,
09:35 25 by the way. I didn't hire someone else, other people did.

1 But the reason it is important, I think, to get the letter
2 out, and I appreciate the Commission getting together now,
3 is this: The legislative session is beginning, as you all
4 know now.

09:35 5 Right now the Policy Commission does have a
6 letter into the legislature, which is going to be very
7 important, and there's no disagreement with that letter at
8 all, and it talks about extending the tax. There is no
9 mention in that letter about extending the Fund, so to
09:36 10 have the letter that's already with the legislature from
11 the Policy Commission talking about getting the tax,
12 coupled soon in the legislative process, at the beginning
13 of the legislative process with a letter that talks about
14 extending the deadline to submit claims I think would be
09:36 15 inappropriate, so thank you very much.

16 CHAIRPERSON CLEMENT: Thank you very much.

17 A VOICE: You want me to hand in a speaker slip?

18 CHAIRPERSON CLEMENT: Please.

19 Any other public comments?

09:36 20 Ms. Roxlo.

21 MS. ROXLO: I'm Katherine Roxlo. I'm with
22 Arcadis. I just didn't want to not stand up and say
23 something, because I think we're all here, we all
24 understand the importance of this to various small
09:36 25 businesses, and I feel like everything that's been said,

1 what Mr. Pearce just said, and the letter is very well
2 written, and I just wanted to stand up in support of that
3 and also, you know, request that this Policy Commission
4 group do what they can to help us out. We're trying to
09:37 5 clean up sites and, you know, various people really take
6 this seriously, and it's very important to them that this
7 be done.

8 So, it's not that I have anything else to say but
9 just to underline it and request -- you know, the reason
09:37 10 we're here, we don't take this lightly, and so I didn't
11 want it to appear that we're all being quiet. It's
12 important to everyone, I think.

13 CHAIRPERSON CLEMENT: Thank you very much.

14 MS. ROXLO: Thanks.

09:37 15 CHAIRPERSON CLEMENT: Yes.

16 MR. KEC: My name is Bob Kec. I'm the owner of
17 Western States Petroleum, a small petroleum dealership
18 located here in Phoenix.

19 I've spoke before this Board before, and I am one
09:38 20 of the guys -- one of the companies that started our
21 environmental cleanup 10, 15 years ago, and we acknowledge
22 the dates of June 2006, and we went through every site we
23 had, every location that was environmentally impacted and
24 found out that we actually had three that were not
09:38 25 recognized earlier. One, we were able to get started on

1 immediately because it's like 2006 plus a few months, and
2 now we're about three or four months from completing that
3 issue, which has taken us two years to do.

4 We still have -- at that point we recognized we
09:39 5 had two sites that were not the ordinary -- excuse me --
6 so, we started on the phase of -- not starting on these
7 other two sites that were more complicated and out of
8 downtown reach, say, and they're 70 or 80 miles away from
9 our headquarters.

09:39 10 To this date, we've spent tons of money doing our
11 research, and we've yet to put a spade in the ground to
12 try to clean up any of the problem.

13 And like the rest of you, I'm strongly in favor
14 of being able to -- because we did our due diligence back
09:40 15 when it was requested, that we be allowed to continue
16 these projects but we would be hard-pressed to continue
17 them without the Fund. So, I would strongly encourage the
18 legislature to accept this, and that it means everything
19 to our small company. Thank you very much.

09:40 20 MR. BUNCH: Thanks.

21 CHAIRPERSON CLEMENT: Other comments?

22 Mr. Trembly.

23 MR. TREMBLY: Jeff Trembly, Mogollon
24 Environmental Services.

09:40 25 I submitted a letter to the Commission where I

1 stated that I believe an extension is appropriate on a
2 site-specific basis for people who can demonstrate they've
3 made a continuing good faith effort to comply with the
4 requirements of the program.

09:40 5 I think a blanket extension would be giving
6 people a break who didn't comply with the program. The
7 world changed in 2004. We all knew we had a six-year
8 deadline, we all knew we had to get cracking. If an owner
9 and operator chose not to really get involved until 2007,
09:41 10 and now it's running out of time, sorry, but the
11 opportunity was there, the money was there, they made a
12 poor business decision, and they have to live with it.

13 I don't see why the taxpayers should be asked to
14 bail out a party like that. So, that's my point of view,
09:41 15 and like I say, I'm a person of moderate income, I'm a
16 single person shop, I carried two cleanups on my own.
17 They were both volunteers, and I did it on direct pay.
18 One was closed completely, and it started out with like
19 two feet of product, got done in the time frame, and the
09:41 20 other one is close to being closed and that site is
21 located in Young, Arizona, which is 150 miles from here,
22 down a 15-mile dirt road to get there, great product and a
23 fine grade material, difficult cleanup, and it's very
24 close to being done. We're under the 500,000 within the
09:42 25 time frame, so this can be done. And to bail out folks

1 who didn't put their nose to the grind stone I think is
2 unfortunate. Thank you.

3 CHAIRPERSON CLEMENT: Thank you.

4 Additional comments? I think I saw another
09:42 5 gentleman.

6 MR. CHEDLOCK: I'm Chad Chedlock with Western
7 Technologies. I agree with what Katherine and John Pearce
8 said. The only additional comment that I have is many of
9 the small business owners have been using their land value
09:42 10 in order to fund some of these USTs, and over the last
11 couple of years, with reduction in land values, that money
12 is no longer available. They are not able to borrow
13 against the value of their land because it depreciated
14 over the last few years, so a couple of our clients are
09:42 15 having issues with that in paying funding, and extending
16 the SAF would help.

17 CHAIRPERSON CLEMENT: Thank you very much.

18 Yes, Ms. Roxlo.

19 MS. ROXLO: Katherine Roxlo. I have one other
09:43 20 thought that I didn't bring up, and that's that the UST
21 owners that are working on these sites, even with the SAF
22 reimbursement, they're still putting in a significant
23 amount of their money that's from their business. So, it
24 is impacting the businesses. A lot of them really are on
09:43 25 the verge of bankruptcy because of the financial

1 situation, so, adding the additional burden, it is a
2 burden to them, they pay a lot of their own money even
3 with the SAF reimbursement, but adding the additional
4 money could make those businesses go out of business and
09:43 5 that would not help the Arizona economy either to stress
6 the small business owners.

7 CHAIRPERSON CLEMENT: Thank you.

8 Any other comments?

9 Okay. I really appreciate you all being here
09:44 10 today, and I appreciate you standing up and stating your
11 opinions and your experiences. It's very helpful to the
12 Commission to understand more broadly where people are
13 coming from and what their experiences are with the SAF.

14 Okay. I think we should just have a general
09:44 15 discussion right now, perhaps. What you'll probably do is
16 break this into pieces. Just to remind everybody, we had
17 in our -- I think it was our September meeting, agreed to
18 support the extension of the excise tax to meet the Fund's
19 obligations.

09:44 20 Subsequent to that meeting, a letter was drafted
21 and submitted to the legislature and to the Governor's
22 Office and the director of DEQ. At that point in time we
23 did not have input to the Commission of a sufficient
24 nature to have a meaningful discussion about extension of
09:45 25 the SAF or extension of SAF eligibility, and the

1 Commission did not approve requesting those extensions at
2 that point in time.

3 We have a different economic situation I think in
4 front of us than any of us had ever anticipated in this
09:45 5 State. You know, I'm of a dual mind, frankly, here.
6 There was approximately five to six years of notice about
7 the end of the SAF, and that should have been in most
8 cases sufficient time to complete work. But I'm also
9 extremely sympathetic to the small- and mid-size business
09:45 10 owner, who is funding, prefunding these cleanups. I'm a
11 small business owner, and if I had to fund \$50,000 on a
12 half-a-million-dollar cleanup, that would be a burden, and
13 if I had several of those, that would be a real burden.
14 And I would have to, you know, do that over time,
09:46 15 personally. I'm not in that situation. I'm not a UST
16 owner, but I understand business and having to make, you
17 know, money move so that you can keep your books and you
18 can keep your business going.

19 So, on that note, any other general comments
09:46 20 before we dig into the letter?

21 Mr. Bunch.

22 MR. BUNCH: I have some general comments.

23 First, I want to state for the record that the
24 company that I work for has no stake in this discussion.
09:46 25 I think it's important that everyone know that, that my

1 position is strictly from one of representing you folks.
2 So, Circle K does not have any releases for which we're
3 responsible that we don't think we're going to complete
4 cleanup in time.

09:46 5 My thoughts are this: The legislature had an
6 intent when they put that legislation through, the intent
7 was to allow those releases that were eligible to be
8 cleaned up. And then when we find ourselves in situations
9 like this, I always ask myself what's best for the health
09:47 10 and welfare of Arizona and the people that live here. And
11 I don't see how anyone benefits from sites not being
12 cleaned up. I don't see how the State benefits from more
13 sites, more properties being unusable, unsellable, and the
14 DEQ inheriting more orphan sites. I don't see how that
09:47 15 does anybody any good, and in my mind we're in a better
16 position if the owner/operators today can get their sites
17 cleaned up without any additional burden to the State of
18 Arizona, and if these sites go to orphan, in my opinion
19 they will become a burden.

09:47 20 I was supportive of the extension of the excise
21 tax. I think the State needs the money. I think we're
22 all sensitive to where money goes. Money was set aside
23 for UST cleanups, and we've talked about transfers and
24 those dollars going elsewhere. I think we have an
09:48 25 opportunity right now to make sure some of the dollars

1 that were allocated for these cleanups remain where they
2 belong.

3 So, my position is, regardless of why these sites
4 aren't where they need to be, I think we go down a
09:48 5 slippery slope when we start asking government to be
6 subjective in reviewing hardship or good faith attempts.

7 So, to keep it clean, my opinion, my vote would
8 be, we allow those eligible releases to be -- have dollars
9 made available to them for some reasonable finite limited
09:48 10 time. So, anyway, that's how I feel.

11 CHAIRPERSON CLEMENT: Thank you, Mr. Bunch.

12 Ms. Gaylord.

13 MS. GAYLORD: My key issue is with the idea of a
14 permanent transfer from the UST. The draft letter that we
09:48 15 will be talking about characterizes the 15 percent
16 proposal that may still be floating out there. As a
17 proposal to transfer a third of our fund for so long as
18 budget conditions are difficult, well, that's a
19 mischaracterization.

09:49 20 The 15 percent proposal is to transfer one-third
21 of the State Assurance Fund permanently every year to the
22 general fund. So, I think it's important that our letter,
23 as we go into our discussion, I'd like for that to be a
24 topic of discussion. I think that it is something that we
09:49 25 should be specific on in our letter, that we oppose any

1 permanent transfers from the State Assurance Fund.

2 And then secondarily to that, I guess I agree
3 wholeheartedly with the Chairperson regarding the options
4 we have for extension of the claims deadline. What we've
09:49 5 heard from the stakeholders is two options. One is a
6 permanent extension for all of the claims deadline. The
7 other is perhaps giving DEQ the authority to waive the --
8 or extend the claims deadline on a case-by-case basis.

9 Where I'm coming from on that issue is that I
09:49 10 sense that perhaps it's going to be politically necessary
11 for us to extend the claims deadline for all on a, you
12 know, defined basis, whatever the period of years is, it
13 may be politically necessary for us to do that in order to
14 get widespread support for extension of the tax. And I
09:50 15 think we're going to need widespread stakeholder support
16 in order to hold off additional legislative transfers from
17 the SAF and certainly to hold off permanent transfers from
18 the SAF.

19 So, I would support either one of those claims
09:50 20 extension options that we feel is going to be politically
21 necessary to get us where we need to be. I agree with Mr.
22 Bunch's comments about the goals that we had when this tax
23 was created, the goals that the State had, and I think our
24 Chairperson has eloquently expressed in the past the fact
09:50 25 that we intended originally to help small business people

1 and those of moderate incomes.

2 So, as we discuss the letter, I'd like to discuss
3 not only the claims extension but also the clear
4 expression of our support for the SAF and our support for
09:51 5 preservation of the SAF to the extent possible and our
6 opposition to any permanent transfers from it.

7 CHAIRPERSON CLEMENT: Thank you.

8 Any other general comments before we dive into
9 the letter?

09:51 10 Mr. Findley.

11 MR. FINDLEY: Just a point of clarification. Mr.
12 Bunch mentioned that some of these sites might, if they
13 aren't -- if things don't change and we go past that
14 deadline, that they might go into an orphan site
09:51 15 consideration where they would not -- where the State of
16 Arizona would still be responsible for cleaning them up.
17 Is that --

18 MR. BUNCH: I don't want to claim to be an expert
19 on how sites go from bankruptcy or owner/operators being
09:52 20 unable to effect remediation or cleanups, but I'm assuming
21 that the sites that end up in the orphan program fall out
22 of that category of condition, and perhaps Mike or Joe
23 could clarify for us.

24 CHAIRPERSON CLEMENT: Mr. Fulton, could you
09:52 25 clarify that for us?

1 MR. FULTON: There is no single path to becoming
2 an orphan site, but certainly time doesn't help anything
3 in that regard. As more and more time passes and sites
4 change ownership and as business conditions deteriorate,
09:52 5 that is what leads to people being eligible for financial
6 hardship consideration. That's out there for those that
7 are feeling that they cannot fulfill their corrective
8 action obligations. That's been the State Lead Program's
9 primary input of sites, so that's always been out there.

09:52 10 But what it does mean is, well, if you're not
11 going to clean it up, who will, and once the site comes
12 into the State Lead Program, meaning either through
13 financial hardship or a site that's discovered to be
14 completely orphaned, a new and discovered tank which no
09:53 15 owner/operator has, that universe grows.

16 So, as Mr. Bunch was discussing here, these don't
17 just go away. They will just sit there until either a
18 property transaction propelled them into cleanup, and in
19 rural areas that's tough right now because of property
09:53 20 values and the economy, or the State perhaps picks them up
21 under the State Lead Program, cleaning them up on a
22 riskwise basis, that's how we do it right now.

23 So, if the Fund were to terminate, and I'm not
24 advocating one position or another, you have to be aware
09:53 25 of that right now, if it was to terminate without some

1 sites being taken all the way through corrective action,
2 we're left with a couple of hard choices. One is to ramp
3 up enforcement. We've been exercising a great deal of
4 enforcement discretion over the years, knowing that, yes,
09:54 5 there are deadlines in corrective action plans that are
6 supposed to be done, but we haven't necessarily come down
7 very hard in all cases on people of limited means. We
8 have to recognize the economics of the situation.

9 So, if the Fund goes away, we're left with
09:54 10 enforcement or the financial hardship option or sites are
11 abandoned altogether. So, it's not a great outcome in
12 either case. They're not going a way. They're not
13 disappearing.

14 I think one of the other questions, someone might
09:54 15 put this on the table, I think we're doing a good job in
16 the State Lead Program of taking care of those sites that
17 are orphaned or financial hardship, that are creating
18 environmental health impact and hazard. There are more of
19 those out there, but those that remain, how impactful are
09:55 20 they to the human health of the environment versus just a
21 barrier to redevelopment, I don't know. But I think we're
22 doing a good job of taking care of the riskiest sites.

23 But it is, as Ms. Gaylord said over and over
24 again, we need to have some backup to cleaning up sites
09:55 25 that have yet to be discovered that are causing

1 environmental impacts, and the Fund being transferred to
2 such a point that there is no money to carry on the
3 obligations of the Department, that's of concern to us as
4 administrators of the Fund, having unfunded mandates out
09:55 5 there to have in hand really, as it was crafted in the
6 sunset, is going to be pretty well funded, but it doesn't
7 look possible right now with the amount of transfers we've
8 had.

9 CHAIRPERSON CLEMENT: Mr. Findley.

09:56 10 MR. FINDLEY: And that's the State Lead Fund?
11 What is the future funding of that? Is that dependent on
12 the carryover money that should be in there?

13 MR. FULTON: Correct. As 1306 put together,
14 there is the anticipation that revenues to the Fund would
09:56 15 be sufficient to allow the accumulation of up to \$60
16 million in revenues that came in that weren't paid out for
17 claims today, but were set aside eventually, in simple
18 terms, set aside into the Regulated Substances Fund for
19 the future obligations of the Department. That was really
09:56 20 the focus of the September 1, 2009 report. It didn't look
21 like we're going to have \$60 million. This is because of
22 ongoing actions in additional transfers, this had the
23 shelf life of bananas pretty much. A lot of the money
24 that we talked about being, as far as revenues and
09:57 25 transfers assumed, haven't even held true in the short

1 moment that it occurred since then.

2 So, the 12.9 million -- if we were rewriting this
3 report with what we knew, that number would be even a
4 smaller prediction of transfers to the Regulated Substance
09:57 5 Fund.

6 CHAIRPERSON CLEMENT: Ms. Gaylord.

7 MS. GAYLORD: Just to this point of the orphan
8 share and the State Lead program, it is true, though, I
9 mean, just as we're talking about it, just in the interest
09:57 10 of full disclosure, I guess, we have plenty of money in
11 the State Lead Program right now because we received
12 Federal stimulus funds. But I think the point stands,
13 because to the extent a business goes into bankruptcy or
14 financial hardship over the next two, three years, and
09:57 15 then ends up in the State Lead Program, we have no
16 expectation of receiving additional Federal stimulus funds
17 in the future. We can't count on multiple years of
18 Federal stimulus funds, and so we know that if there is,
19 in effect, two, three years down the road of additional
09:58 20 sites going into the State Lead Program, we don't know
21 that we'll be able to fund the low risk sites. We don't
22 even really know that we'll be able to fund the high risk
23 sites in there, do we, based on the uncertainty we've seen
24 in the shelf life of bananas you are referring to.

09:58 25 MR. FULTON: Yeah, it's tough to predict that

1 future, but to the point of the stimulus money, yes, I
2 think it's a -- we're not counting on that as a future
3 funding source. I think we'll be well-positioned, because
4 we've been spending the money we've been given wisely and
09:58 5 quickly, we will be well positioned to take any
6 re-allocations of that money that might come in the future
7 years.

8 But the \$3.2 million that came to the State Lead
9 Program, that's less money than we could be spending
09:59 10 already. It's just to help us supplement an offset for
11 one year or two years' time, the money we would have put
12 towards State Lead Program out of the State Assurance
13 Fund, so we're just substituting the money.

14 And like every other State program here that's
09:59 15 benefited statewide from stimulus money, that money is not
16 going to be here next year and the year after, so it's
17 been a bit of a bridge that's put off some of the pain,
18 but it might get very painful once it's used up. Those
19 obligations are still out there.

09:59 20 CHAIRPERSON CLEMENT: I think it's a political
21 reality that a State agency requesting funding versus
22 stakeholders that are politically empowered is much less
23 likely to get funding. In other words, if we have a
24 number of these sites that become orphan sites, and the
09:59 25 money keeps getting allocated or removed into the general

1 fund, State agencies saying we need money to manage orphan
2 sites is much less appealing to the State legislature than
3 a group of stakeholders that represent business interests
4 that, you know, have an important function in the State.

10:00 5 I think that's a political reality in the State of
6 Arizona, particularly at this time.

7 MR. FINDLEY: Just a comment following on from
8 that. I think that's an unfortunate reality, and as a
9 representative from the environmental community, I feel
10:00 10 that I represent the larger community rather than the
11 immediate stakeholders, who might be here today, and from
12 that point of view, I think I would definitely concur with
13 the idea of extending the sales tax or the excise tax, so
14 that there is continued funding, and the eventuality of --
10:01 15 very real eventuality of some of these sites not being --
16 having anybody responsible for them, and the Route 66
17 program, which I know is a favorite of some people, which
18 is again appealing to a certain part of the population, if
19 not the community that might be represented here today.

10:01 20 CHAIRPERSON CLEMENT: Thank you.

21 Well, are there any other general comments or
22 discussions before we delve into this letter? And the
23 reason I suggest -- we have never done this before, take a
24 letter from an outsider, bring it to the Commission and
10:01 25 then use it as a template, but it is very well crafted and

1 I think it will save us time and certainly time in
2 preparing the letter, if we go through this paragraph by
3 paragraph and discuss each paragraph, and then we will
4 vote as appropriate on these issues as they come through
10:02 5 the letter, if that's acceptable to everybody.

6 Okay. I think the first paragraph is just fine.
7 It just states who we are, and I think it is fairly close
8 to the paragraph I had written previously.

9 Any other comments on that?

10:02 10 The second paragraph is the background of our
11 recent letter, and I did not see anything in that
12 paragraph.

13 Any other comments or questions on that?

14 The third paragraph is just an introduction into
10:02 15 the background of this, and I think now we get into more
16 of the meat of the letter.

17 The current key dates for SAF, any comments on
18 that first paragraph? It seems to be accurate and well
19 stated.

10:03 20 Second paragraph under current key dates for SAF,
21 any comments?

22 MR. BUNCH: Is that the one that starts "SB 1306
23 also provided"?

24 CHAIRPERSON CLEMENT: Yes.

10:03 25 MR. BUNCH: I was under the impression that the

1 SAF also provided some funding for DEQ staff, and I think
2 the \$60 million that was going into the Regulated
3 Substance Fund also had a component towards supporting
4 programs. Is that accurate? Does anyone know?

10:03 5 MR. FULTON: Okay. In support of the program,
6 the State Assurance Fund analog within -- when the State
7 Assurance Fund would go away, that \$60 million would be
8 made available for the State to take care of its
9 obligations that were given to it under 1306, including
10:03 10 bank or staff to administer that work.

11 MR. BUNCH: I think that point is important, that
12 we all acknowledge that this money also helps provide some
13 support for the staff in addition to corrective actions.

14 CHAIRPERSON CLEMENT: The paragraph, or the
10:04 15 second sentence in that paragraph reads, "The 60 million
16 figure represented an estimate of the amount of money the
17 State would need going forward to, number one, manage the
18 UST program."

19 MR. BUNCH: Okay.

10:04 20 CHAIRPERSON CLEMENT: Do you think that's
21 sufficient, Mr. Bunch?

22 MR. BUNCH: That's fine.

23 CHAIRPERSON CLEMENT: We could say administer if
24 that's what you would prefer.

10:04 25 MR. BUNCH: I read it real quickly.

1 CHAIRPERSON CLEMENT: Okay. Any other comments
2 on that paragraph?

3 Okay. The next is titled "SAF Transfers and
4 Impacts." And I would ask DEQ on this first number.
10:04 5 Since the beginning of fiscal year 2008, approximately 58
6 million has been transferred?

7 MR. FULTON: I don't know if that -- I haven't
8 verified that number, but I could work to do that. But it
9 doesn't look off. It's not out of the order of magnitude,
10:05 10 let's put it that way.

11 CHAIRPERSON CLEMENT: Okay. Ms. Gaylord.

12 MS. GAYLORD: Two points. On the first sentence,
13 58 million was the number that was thrown out more than a
14 month ago as total transfers from DEQ. Maybe it's just a
10:05 15 coincidence, maybe it's the same number from SAF now. I
16 just would --

17 MR. FULTON: Yeah, it would be a big coincidence.

18 MS. GAYLORD: I would support -- yeah, I would
19 support checking into it and make sure that wasn't a DEQ
10:05 20 number that somehow got put in here.

21 And then on the second sentence, I think it's
22 probably real important that we not characterize that as a
23 DEQ proposal. I think in talking in that second sentence
24 about the 15 percent plan, I think we should characterize
10:05 25 that as just one idea that was put on paper or something,

1 because DEQ didn't actually propose that. They were asked
2 by the Governor to kind of put forward what would happen
3 if they had to cut 15 percent, and I don't think they
4 necessarily supported the -- I mean, it was something they
10:06 5 were forced to do. I don't even know that the Governor
6 formally proposed the 15 percent plan, although everybody
7 has got ahold of it and it's been made public, but I just
8 would hesitate to characterize -- I would hate to give it
9 any more validity than it's got.

10:06 10 CHAIRPERSON CLEMENT: Do you have a specific
11 language suggestion here?

12 MS. GAYLORD: Yeah, I would wonder about DEQ's
13 view on that, and if they agree with that, then yeah, we
14 could come up with some language.

10:06 15 MR. FULTON: I don't -- if the operative word we
16 are talking about is "proposed", each agency was asked to
17 come up -- directed to come up with a plan implementing
18 15 percent permanent reduction in expenditures. Though it
19 was reluctantly done, it was proposed. I don't want to
10:07 20 overemphasize how we were unenthusiastic about putting the
21 proposal in here, but it was our proposal. We were asked
22 to come up with a plan, and that contained what is now on
23 the JLBC website for most State agencies, their plans,
24 their options for implementing the 15 percent permanent
10:07 25 expenditure reductions.

1 CHAIRPERSON CLEMENT: Ms. Gaylord.

2 MS. GAYLORD: So I would defer on that to DEQ's
3 position on that. If DEQ is comfortable with that
4 characterization, that's fine.

10:07 5 And then I would recommend a change to the last
6 part of that sentence where it says that the proposal was
7 to make that level of transfer annually thereafter until
8 budget conditions improve.

9 The proposal was actually a permanent cut, so I
10:07 10 would want to revise that language.

11 CHAIRPERSON CLEMENT: And it could be as simple
12 as to make that level of transfer annually on a permanent
13 basis.

14 MS. GAYLORD: Yes.

10:08 15 CHAIRPERSON CLEMENT: Do we need to vote on this
16 language as a piece now or do we need to get this in a
17 consensus item that does not require -- I mean, it's
18 basically clarification of facts.

19 MR. BUNCH: It's a statement of fact.

10:08 20 CHAIRPERSON CLEMENT: So, we have two facts
21 clarification. One is complete, which is that it was a
22 permanent transfer, not an on annual thereafter until
23 conditions improved.

24 And then the second verification of fact is Mr.
10:08 25 Fulton will get back with the Chair on the 58 million, or

1 Ms. Stone now.

2 Okay. So that we will just move forward then
3 from there.

4 Then we're on to the next paragraph beginning
5 "Even before". That's the 12.5 million.

10:08

6 I think that's revised down.

7 MR. FULTON: That one says if our September 1,
8 2009 report -- that was our projection of what the UST
9 fund balance would be at -- where is that number --

10:09

10 available for transfer to the Regulated Substances Fund
11 was about 12 and a half million, so that might need to be
12 qualified with source by attributing that to the
13 September 1, '09 report.

14 CHAIRPERSON CLEMENT: Or can we get a better
15 number?

10:09

16 MR. BUNCH: It might be more compelling to have a
17 better number, in my opinion.

18 CHAIRPERSON CLEMENT: I mean, right now, based on
19 SB 1001, we've got how much that would be transferred?

10:09

20 MR. FULTON: My single reluctance to that is as
21 we move through the number change landscape, we have to
22 further explain differences between what we just submitted
23 in September '09, and a new number, more numbers floating
24 around, to provide clarity, so that's my concern with
25 that.

10:10

1 CHAIRPERSON CLEMENT: Ms. Gaylord.

2 MS. GAYLORD: I just would offer that because
3 this comes from the stakeholders, this doesn't have to be
4 an official DEQ projection. I don't believe there is a
10:10 5 value in saying at this moment in time before you make
6 additional transfers on this date we're projecting there
7 is as little as or as much as X in the month in
8 termination.

9 CHAIRPERSON CLEMENT: The problem with that is we
10:10 10 don't know -- correct me if I am wrong, just assuming that
11 your projections are correct on this sheet relative to and
12 also SB 1001, we have a general idea of how much money is
13 going to come in, but we don't know in years 2011 and 2012
14 and part of 2013, how much is going to be taken out by the
10:11 15 legislature. We could perhaps say -- right, we don't.

16 MR. FULTON: That was -- I'm sure that was what
17 we articulated in this report, particularly which was 12.5
18 was our estimate. We did not seek in this exercise to
19 project what transfers in 2011, 2012 would have been.

10:11 20 CHAIRPERSON CLEMENT: So, we could qualify this
21 statement. This does not include any potential transfers
22 in 2011 or 2012.

23 MS. GAYLORD: Or 2010.

24 CHAIRPERSON CLEMENT: Or addition in 2010.

10:11 25 MS. GAYLORD: And I think it's exactly the same

1 thing we've done. Each time we've had a projection, we've
2 always said, you steal more of our money, this changes.
3 We don't need to say it so lightly.

4 MR. BUNCH: 1001 came after September 1; correct?

10:12 5 CHAIRPERSON CLEMENT: Yeah.

6 MR. BUNCH: So that's 9 million they've already
7 published.

8 MR. FULTON: I think we've had two more special
9 sessions, then, before it came out.

10:12 10 MR. BUNCH: Yeah.

11 MR. FULTON: So, I could count another
12 projection, but I don't know that it's going to be any
13 more of a permanent service.

14 CHAIRPERSON CLEMENT: Ms. Gaylord.

10:12 15 MS. GAYLORD: I would just note that revisions to
16 that paragraph are probably in order. Whether we come up
17 with a number or not, it's kind of a miscue. People will
18 read it and say, oh, they're doing it again.

19 CHAIRPERSON CLEMENT: That is my concern, that
10:12 20 they will see that 12.5, which isn't accurate based on the
21 numbers we have today, and it sounds like a lot of money,
22 you know, in this climate.

23 So, I understand your concern about not wanting
24 various numbers floating around, but 12.5 is a big number,
10:13 25 so we can take more money.

1 MR. FULTON: Well --

2 MR. BUNCH: It could be as simple as of September
3 -- as of the September report, there was an estimated
4 12.5 million, but since there's already been another
10:13 5 scheduled automatic transfer to that --

6 MR. FULTON: There is actually 3.3. Nine is not
7 to be confused with what was proposed for the 15 percent
8 plan.

9 MR. BUNCH: Oh.

10:13 10 MR. FULTON: You can argue whether that even
11 should be in here, but I think it's relevant to
12 discussion. There have been a lot of proposals out there,
13 and all of them are showing negative impacts to the Fund.

14 CHAIRPERSON CLEMENT: Well, we certainly want to
10:13 15 revise this paragraph to reflect, I think, an additional
16 3.3 million that's on the table being transferred as real,
17 as a fact. And we want to revise it to reflect that it
18 does not include any additional transfers in 2010, 2011,
19 2012.

10:14 20 MR. BUNCH: There you go.

21 CHAIRPERSON CLEMENT: And so I don't want to make
22 any consternation for DEQ, but I think at a minimum we
23 should subtract the 3.3 from the 12.5.

24 MR. FULTON: It would be safe to articulate
10:14 25 what's been on the books since then, these additional

1 have been added as transfers.

2 CHAIRPERSON CLEMENT: Okay. That's fact. That's
3 not speculation. I don't think we can move on without a
4 vote on that.

10:14 5 The next paragraph is, "The Commission believes
6 that it will be impossible." I'm not so sure about
7 impossible. It would be very difficult to generate
8 stakeholders' support. That's just my -- I'm never an all
9 or everything writer.

10:15 10 Ms. Gaylord.

11 MS. GAYLORD: I fully support changing it to
12 difficult, that's fine, but I would propose to the
13 Commission that we add here the concept of a permanent
14 transfer, because I think, really, if I was a stakeholder
10:15 15 and I saw that the legislature was going to permanently
16 divert a third of the SAF to General Fund purposes,
17 regardless of whether or not we are in a tight budget here
18 in the future, I would not support extension of the tax.

19 So, I'm thinking there are other like-minded
10:15 20 people who would agree, and I would say that that would
21 damage our ability to get widespread stakeholder support.

22 CHAIRPERSON CLEMENT: So, you would include at
23 the latter portion of this one-sentence paragraph to
24 permanent transfers, I'm not giving you full language, but
10:15 25 permanent transfers would also be to, you know --

1 MS. GAYLORD: I think they would be especially
2 damaging.

3 CHAIRPERSON CLEMENT: Especially damaging in
4 obtaining stakeholder support for the proposal.

10:16 5 MR. BUNCH: Gail, I'm sorry, I think we've
6 glossed over what I think is an important point in the
7 prior paragraph.

8 CHAIRPERSON CLEMENT: Let me just capture this.
9 I will be right there.

10:16 10 Okay. Bill.

11 MR. BUNCH: We were discussing the 12 and a half
12 million, but then we go on, the letter states that "This
13 would not allow ADEQ sufficient funds to implement the UST
14 corrective action program after collection of the excise
10:16 15 tax ends."

16 Do we feel that's accurate?

17 CHAIRPERSON CLEMENT: Yes.

18 MR. BUNCH: We have a concern, but that's a
19 pretty strong statement.

10:16 20 CHAIRPERSON CLEMENT: I think that's absolutely
21 accurate, personally.

22 MR. BUNCH: Okay.

23 MR. FULTON: For reference, you might refer back
24 to the September 1, 2009 report, which was DEQ's report or
10:16 25 its DEQ's analysis of what happens. I will read one of

1 the paragraphs in the brief analysis here that was that
2 smaller than anticipated SAF available for transfer to the
3 Regulated Substance Fund will impact DEQ's future ability
4 to perform cleanups of orphan sites throughout the State
10:17 5 that may be discovered, that also may threaten human
6 health. In addition, ADEQ's ability to perform cleanups
7 of already leaking USTs when the owner/operator will also
8 be reduced. It didn't attempt to quantify it, but
9 certainly one of the things that was on the report.

10:17 10 MR. BUNCH: So, make sure we all do this with our
11 eyes wide open.

12 CHAIRPERSON CLEMENT: Thank you. Okay. We're on
13 to paragraph -- first paragraph on page 3, "Current
14 Deadline for Submitting Claims".

10:18 15 MR. FULTON: One thing that, in my limited study
16 of the State Assurance Fund has helped me do is to be
17 careful in word choices, and the universe of sites that we
18 talked about is one of the confusions. There is SAF
19 eligible sites that we need to be really talking about,
10:18 20 because not every site is -- State Assurance Fund is not a
21 requirement. It's an option available for those that want
22 to access the Fund. There are requirements attached to it
23 for participation of that Fund, so I would like to put in
24 SAF eligible on the fourth line down, universe of State
10:18 25 Assurance Fund eligible sites. Not every site was SAF

1 eligible in that projection.

2 CHAIRPERSON CLEMENT: Okay. Ms. Gaylord.

3 MS. GAYLORD: I would suggest that the person,
4 obviously the statement of fact, all of the text after
10:19 5 that, I would suggest that we characterize that as reports
6 from stakeholders, not as our personal testimony, if that
7 that's the case. We could say that stakeholders are
8 reporting these things to us.

9 CHAIRPERSON CLEMENT: I think that's correct for
10:19 10 the representation on this Commission. I don't think any
11 of us, perhaps except Ms. Kalaghan, could clarify anything
12 else, but I don't think any of us have a personal stake,
13 so stakeholder testimony, stakeholder comments, anything
14 of that nature.

10:19 15 I do have a question and I don't know if anyone
16 on the Commission can respond to this, but it says,
17 "Moreover, since the majority of owner/operators are
18 small- and medium-sized businesses," is that a correct --
19 to your knowledge, Mr. Fulton, do you know if that's
10:19 20 correct?

21 MR. FULTON: By the number of facilities out
22 there, I think it is. They also are the -- I think they
23 also make up the majority of the remaining open SAF
24 eligible releases out there, if that's an expansion of
10:20 25 that.

1 CHAIRPERSON CLEMENT: Okay.

2 MR. FULTON: I don't know if that was the point
3 of the author here, but it's true in both cases.

4 CHAIRPERSON CLEMENT: And I think we want to say,
10:20 5 rather than the majority of owner/operators are, it's the
6 majority of eligible sites for cleanup, SAF eligible sites
7 are under small, medium-owned operators, are owned and
8 operated by small, medium-sized businesses.

9 Any other comments, Mr. Bunch, on that paragraph?

10:21 10 MR. BUNCH: Just more of kind of a form. You
11 know, we probably don't want to use the word "universe"
12 twice. We might want to find a different way of
13 expressing the increase of those stores, those sites, I
14 should say.

10:21 15 CHAIRPERSON CLEMENT: The number of sites. Okay.
16 Anything else on that paragraph?

17 MR. BUNCH: There was a theme that was brought up
18 in the December Evaluation Subcommittee meeting, I thought
19 that -- the stakeholders thought it would have attraction
10:21 20 to the legislature, and that was urban redevelopment, if
21 these sites don't get cleaned up, there would be kind of a
22 hindrance to urban redevelopment, and just something that
23 you might want to consider throwing in. That was a
24 concept that was brought forward.

10:22 25 CHAIRPERSON CLEMENT: Ms. Gaylord.

1 MS. GAYLORD: Well, I've got a continuing concern
2 regarding the impacts of this program on urban
3 redevelopment.

4 MR. BUNCH: Rural, I apologize.

10:22 5 MS. GAYLORD: Oh rural, okay. That's what I
6 thought he was going for. But I think the urban
7 redevelopment issue is that orphan tanks are often the
8 result of bankruptcy and financial hardship, but the other
9 source of orphan tanks is when we discover them, it's by
10 redevelopment of urban areas.

11 And so we definitely -- one of the key elements
12 of this program should be that there should be enough
13 money to take care of the orphan sites that are found in
14 the midst of urban redevelopment projects that are very
10:22 15 environmental and beneficial.

16 I don't know whether that belongs in this
17 paragraph, however, we might want to add that somewhere
18 else.

19 And the rural redevelopment issue as well, we
10:22 20 might want to add as support for our conclusions for our
21 position.

22 CHAIRPERSON CLEMENT: I had crafted a brief
23 sentence, and I don't know, I'm certainly open to any
24 changes.

10:23 25 Further, if UST sites are not cleaned up in a

1 timely manner, this will lead to, again, very short, to --
2 I can't think of the word -- difficulty or problems in
3 urban and rural redevelopment.

4 MR. FULTON: Well, obviously what projections
10:23 5 were put together going forward for what the universe
6 looked like, the unknown couldn't be part of that
7 calculation. I don't know whether the 60 million
8 anticipated that the State would be around to help make an
9 owner/operator, who happened to buy land, a piece of
10:23 10 property that had a UST on it, whole, if that was found to
11 be released, that in the future, post State Assurance
12 Fund, that was going to become a cost of doing business.
13 It's just an observation. I don't advocate one position
14 or another. But the 60 million was money to take care of
10:24 15 SAF eligible releases that remained after the Fund
16 expired.

17 CHAIRPERSON CLEMENT: Ms. Gaylord.

18 MS. GAYLORD: I would just point out, under
19 State law, let's say you are building a large regional
10:24 20 government complex, under state law, if you don't fill the
21 extension of those tanks, they don't become yours, so you
22 don't -- under existing law, I don't think the development
23 of the surface land, the developer would have an
24 obligation to clean up the Underground Storage Tank
10:24 25 release. And that's my concern, that that release, there

1 might not be anyone liable to clean up that release.

2 MR. FULTON: That was one of the challenges of
3 sunsetting the fund, it's just drawing a line and saying
4 it's a great public policy discussion or a position, but
10:24 5 SAF eligible sites were in the cue, that became the
6 universe, they had to be discovered and reported before
7 2006. Everything after that, the landowner has to deal
8 with it.

9 CHAIRPERSON CLEMENT: What about the Route 66
10 Initiative?

11 MR. FULTON: The Route 66 Initiative is just a
12 focused effort on redevelopment of sites, discovery of
13 sites that were along Route 66, put together with the
14 knowledge that there were a great number of sites along
10:25 15 Route 66 that had since ceased to operate after the
16 interstate went through. That was a focused effort to
17 find those, to get them that were SAF eligible in through
18 and cleaned as soon as possible.

19 CHAIRPERSON CLEMENT: Would they still, though,
10:25 20 be part of the State Lead to clean up?

21 MR. FULTON: Sure.

22 CHAIRPERSON CLEMENT: Potentially.

23 MR. FULTON: Yeah.

24 CHAIRPERSON CLEMENT: So, I mean, we have one
10:25 25 case -- I'm just speculating here, and I don't know.

1 MR. FULTON: Let me, just to expand, the \$60
2 million wasn't -- I don't think that there was a pot of
3 money set aside for undiscovered sites that were
4 discovered during redevelopment of the piece of property.
10:26 5 That's the point I'm trying to make. I don't think that
6 there was an intent that the State Fund would come to
7 clean those up if they were discovered when a skyscraper
8 was being built, as an example, unless it happened to be
9 SAF eligible and reported before 2006. That was the hard
10:26 10 line drawn. That's the tough parts of sunseting these
11 funds is, you have to draw a hard line and then future
12 stuff discovered isn't covered, so that's the point I'm
13 just trying to clarify.

14 CHAIRPERSON CLEMENT: Does this sentence belong
10:26 15 in this paragraph or does it belong somewhere else or does
16 it not belong?

17 Ms. Gaylord.

18 MS. GAYLORD: I see a distinction between the
19 point Mike is making and the sentence. The sentence
10:26 20 stands because oftentimes what kills the urban or rural
21 redevelopment project is the extensive delay caused by
22 everybody trying to figure out who should be liable for
23 taking some action with respect to this tank that's been
24 discovered and the release that's been discovered, where
10:27 25 there is first new effective release, so I think the cloud

1 it casts over the proposed development and the delay it
2 often causes in the midst of redevelopment when these
3 things are discovered, it's still the effect that we want
4 to avoid, so I think the sentence is okay, unless Mr.

10:27 5 Fulton is saying --

6 MR. FULTON: No. I was just trying to bring this
7 up in the context of the conversation, trying to further
8 define what the universe of sites meant, at least in the
9 context of \$60 million, what was going into that universe
10:27 10 as we came up with the \$60 million number and the future
11 obligations of the Department.

12 So, just to belabor this a little bit, the future
13 obligation of the Department was not in my mind to clean
14 up sites that were discovered post and established post
10:28 15 2006. That became -- that unfortunately becomes a cost of
16 doing business of redevelopment. That's the cutoff.

17 CHAIRPERSON CLEMENT: Excuse me, but I thought
18 the 60 million also was to cover the recognition that
19 final hardships would become more likely than less likely
10:28 20 as SAF eligible sites were no longer -- sites were no
21 longer eligible for SAF funding, and so that part of that
22 60 million was in the case of newly discovered releases
23 post eligibility date.

24 Am I -- I mean, I may be wrong about that.

10:28 25 MR. FULTON: I might be wrong as well.

1 Ron, do you have any -- or, Tara, any opinion
2 about that?

3 MR. KERN: It's been a while since I looked at
4 Senate Bill 1306, but it's my recollection, and, Joe, you
10:28 5 might disagree with me on this, but it was for MNA sites,
6 it was for basically sites that were already in the cue.
7 It really didn't, to the best of my knowledge, address any
8 new sites.

9 CHAIRPERSON CLEMENT: Ms. Gaylord.

10:29 10 MS. GAYLORD: And the source of my confusion is,
11 I don't think the liability language was changed in Senate
12 Bill 1306, so the new landowner isn't liable for that
13 release, so it appears that nobody --

14 CHAIRPERSON CLEMENT: It's a catch 22.

10:29 15 MR. FULTON: I guess they may not be liable, but
16 there is not a fund -- the obligation of the Fund was not
17 to make them whole. I'm saying -- I'm trying not to be
18 too brutal about it, then it becomes those unreported
19 releases. They could, if those owner/operators are
10:29 20 hardship eligible, make a case for orphan status.

21 CHAIRPERSON CLEMENT: Mr. Bunch.

22 MR. BUNCH: I think at the end of the day, and
23 maybe this is a politically naive, but whether something
24 was contemplated, you know, back in 2004, is it really
10:29 25 relevant at the end of the day if you have a problem. And

1 if we have more sites that are going to fall into possibly
2 the State Lead program, at the end of the day, whether it
3 was contemplated or not, I think the State is still going
4 to have problems, and we're still going to inherit sites
10:30 5 and there are going to be environmental conditions out
6 there that need to be addressed.

7 And taking a look moving forward, I don't think
8 it's inappropriate, because the world has changed a lot
9 since 2004 in many regards. I don't think anyone
10:30 10 contemplated the types of financial issues that the
11 Department would be facing four years ago, six years ago
12 what they're facing today.

13 CHAIRPERSON CLEMENT: Ms. Gaylord.

14 MS. GAYLORD: And it may be that the Commission
10:30 15 wants to address this further as part of the extension of
16 the tax, because I don't think I ever understood that we
17 had created a situation where no one was liable for
18 cleaning up a release, and where the Department didn't
19 have the legal authority to use the Fund to clean up the
10:30 20 release, in which case we haven't done the State a service
21 here, because these orphan tanks, there is no past
22 owner/operator, there is no one, so the new landowner --
23 if the new landowner isn't liable for the release and the
24 State funds can't be used, then it just doesn't get
10:31 25 cleaned up.

1 MR. FULTON: I opened a can of worms there.

2 CHAIRPERSON CLEMENT: Yeah. Well, okay.

3 MR. FULTON: It's -- not to get lost in the
4 forest here, but that's a nuance here.

10:31 5 CHAIRPERSON CLEMENT: And I understand what you
6 are saying, Ms. Gaylord, but we need to focus this letter,
7 I think, on the issue at hand. And I think that is a key
8 issue, and let's not lose track of it, but I would hate to
9 really get them confused.

10:31 10 Ms. Gaylord.

11 MS. GAYLORD: Let me be clear on what I'm
12 proposing. I'm proposing that as the extension of the
13 State tax goes forward, we need to stay involved. And to
14 the extent that -- to the extent there is a bill that
10:31 15 affects the current language on the uses of that transfer
16 at the end of the day, then we obviously have an interest
17 in discussing that.

18 For purposes of this letter, my key issues remain
19 support of the Fund, support of the Fund for its intended
10:32 20 uses, and opposition to additional transfers, especially
21 additional and permanent transfers.

22 CHAIRPERSON CLEMENT: Thank you. Well, I think
23 we did elucidate something that was a key issue that I
24 don't think any of us, except Mr. Fulton, fully had
10:32 25 knowledge of, and I'm going to record that just so I can

1 keep this in my notes.

2 Okay. Okay. Now we get to the meat of this
3 letter, and I appreciate all of the comments to date. I
4 think it will be a better letter.

10:32 5 The first is, I don't think we have to re-vote on
6 this, do we?

7 MS. GAYLORD: There was one last little paragraph
8 before the recommendations, if I could just offer that.
9 That last sentence is very definitive, and, again, I
10:33 10 wonder whether the Commission wants to just say the
11 stakeholders are reporting to us that the existing claims
12 submission deadline won't allow it to occur.

13 CHAIRPERSON CLEMENT: Any other comments before
14 we get into the meat?

10:33 15 You've all been here an hour and a half, and now
16 we're going to get to the crux of the meeting.

17 Okay. The first agenda -- the first paragraph,
18 the first bullet, we have voted on this previously. We
19 have written to the legislature previously, and I don't
10:33 20 think it requires another vote. I'm looking towards my
21 two legal eagles.

22 MS. HUDDLESTON: The Commission voted to approve
23 this letter.

24 CHAIRPERSON CLEMENT: True. I'm just looking at
10:34 25 this particular sentence.

1 MS. HUDDLESTON: Oh, I see.

2 CHAIRPERSON CLEMENT: I'm not there yet.

3 But I was -- I want to break these sentences up
4 because they are specific issues, and I want to be sure
10:34 5 that if we have to vote on them individually, that we vote
6 on them individually, and if we've already agreed to them,
7 do we need to re-vote on them. I don't think so. We will
8 have a vote on the full letter also, but I'm just trying
9 to piece this so we can work with it.

10:34 10 Okay. I think that we are just reiterating what
11 we've already said in our letter, the second bullet.

12 The third bullet I do think requires some
13 discussion.

14 Ms. Gaylord.

10:34 15 MS. GAYLORD: I apologize. On the second bullet,
16 could we change the sentence to say "The legislature
17 should extend the existing excise tax"?

18 CHAIRPERSON CLEMENT: Yes.

19 MS. GAYLORD: So strike the word "consider" and
10:35 20 strike the i-n-g at the end of the "extend".

21 CHAIRPERSON CLEMENT: And that's exactly what we
22 said, maybe not in those precise words, but that's what we
23 said in our November 11th letter, so there's no
24 difference. Okay.

10:35 25 MS. GAYLORD: And, I'm sorry, then you'll have to

1 -- after the comma, it says "or alternative funding
2 sources", perhaps the word "provide" or "provide
3 alternative funding sources".

4 CHAIRPERSON CLEMENT: So that reads now, "The
10:35 5 legislature should extend the existing excise tax past its
6 current expiration date (December 31st, 2013), or provide
7 alternative funding sources as recommended in our
8 November 11, 2009 letter."

9 Now we're on to, I think, what is probably the
10:36 10 most substantive topic of the day, extension of excise
11 tax. If it's extended, the SAF claim submittal deadline
12 should be also extended.

13 And I would like to break this up into a couple
14 of things. Is that the universe of all eligible sites, or
10:36 15 is that -- should it include voluntary sites? That's
16 certainly a comment we received here. So that would be
17 one topic.

18 The second is, should we provide a date if we so
19 choose to agree to this paragraph, that we should think
10:36 20 that the eligibility or the claim submittal date should be
21 extended to versus leaving it open-ended? So let's -- any
22 other topics?

23 MR. BUNCH: I think there is sort of a third
24 iteration, and that was the ability for the Department to
10:37 25 validate that good faith efforts were made by a submitter.

1 CHAIRPERSON CLEMENT: So conditions on our -- on
2 the extension of all claims submitted?

3 MR. BUNCH: Yeah.

4 CHAIRPERSON CLEMENT: Okay. So, should any other
10:37 5 topics under this one -- let's break this out, then.

6 Should -- you know, let's discuss. There are
7 two types of SAF eligibility claims. One is from a site
8 that a volunteer, who is not an underground storage tank
9 owner and operator can submit for, and then there are the
10:37 10 sites where the owners and operators are actually in
11 business or have been recently in business and they're
12 submitting claims.

13 Is there any opinions on differentiating those in
14 terms of SAF eligibility?

10:38 15 Mr. Bunch.

16 MR. BUNCH: I have a thought on it. I guess I'm
17 confused as to why there would be a distinction between an
18 owner/operator or volunteer. In my mind, the volunteer
19 has bought the property and they've taken the appropriate
10:38 20 measures to become eligible in the program, and they're
21 moving forward, really, with the same stake as an
22 owner/operator. They own the property, now they are a
23 stakeholder, that they've got to get it cleaned up. I'm
24 not sure I understand why there would be a difference
10:38 25 between a volunteer or a traditional owner/operator. To

1 me, the business conditions, all the things we've talked
2 about are similar in both situations.

3 CHAIRPERSON CLEMENT: Any other comments on that?

4 MS. KALAGHAN: I agree.

10:38 5 CHAIRPERSON CLEMENT: Ms. Gaylord?

6 MS. GAYLORD: No.

7 CHAIRPERSON CLEMENT: Okay. Does the agency have
8 any comments?

9 MR. FULTON: No.

10:38 10 CHAIRPERSON CLEMENT: I don't think the AG's
11 office has either.

12 MR. BUNCH: Does silence mean they agree with me?

13 MR. FULTON: I'll explain my silence later.

14 CHAIRPERSON CLEMENT: Okay. Let's go to time
10:39 15 period for extension. I'm frankly not in favor of an
16 open-ended extension to be defined by a political process.
17 I think that we should put some framework in this, because
18 it has always been my contention that this program needs
19 to end at some point in time, not at the hardship of the
10:39 20 small and medium-sized businesses, however, so that's
21 certainly something that I would like to see included as a
22 time period in this. What are the other thoughts here?

23 Mr. Bunch.

24 MR. BUNCH: You know, I agree in principle, but
10:39 25 the concern I have is do we have enough information today,

1 since we have to author a letter very soon, to draw the
2 line in the sand. I think -- I wouldn't want to
3 perpetuate the same error, if you want to call it that,
4 that was made back in 2004.

10:40 5 So, you know, I guess if we could somehow figure
6 out a way to either define that date later, I don't know
7 if we have enough information from the limited people we
8 have in the room to come up with a date, but I do agree at
9 some point this needs to happen. We can't have open-ended
10:40 10 commitments by the State.

11 CHAIRPERSON CLEMENT: Ms. Gaylord.

12 MS. GAYLORD: I have a lot of sympathy for that
13 concern, but I think the reality here is we're not going
14 to have the information for four years' minimum. We won't
10:40 15 know until 2013, 2014 if we're out of the woods. And I
16 think we don't have -- in that interim, we won't have any
17 idea what money they are going to transfer out of the Fund
18 next month or the following month.

19 So I guess on balance I would weigh it in favor
10:40 20 of picking a date. I think in 2004 they actually did a
21 pretty good job. They couldn't have foreseen this, and
22 they did a pretty good job of setting up termination of
23 the Fund, but for this financial disaster, you know, you
24 would have had some people with hardship, but you could
10:41 25 have been having a different discussion about possible

1 exceptions to the rule for folks in hardship. It wouldn't
2 have been the discussion we are having today.

3 So I think today we have to do the best we can,
4 and I do have a lot of sympathy for people, some kind of a
10:41 5 finite end date that obviously we can revisit if
6 circumstances change.

7 CHAIRPERSON CLEMENT: And I think perhaps that if
8 we pick a finite end date, what we could say is, and this
9 should be evaluated as economic conditions, you know,
10:41 10 hopefully improve, or based on economic conditions in the
11 State, you know, something of that nature.

12 But I don't think it's wise for the legislature
13 or for us to recommend an open-ended eligibility period.
14 I just -- you know, I think this is frankly pushing me
10:41 15 past a point of comfort, but I do, and I have listened and
16 I've read, and I've talked to people, and I do understand
17 there is a real issue with this. It's not just negligence
18 because people didn't respond quickly. So, I would be
19 open to a suggestion of anywhere from two to four years in
10:42 20 an extension period. I would be interested in others
21 comments on that.

22 Mr. Bunch.

23 MR. BUNCH: I have a question that I should know
24 the answer for as the environmental manager for Circle K.
10:42 25 But is there not some regulatory driver for releases to be

1 characterized and remediated? Is there anything in the
2 statutes that maybe just by enforcing time lines we might
3 get to the same spot?

4 MR. FULTON: Yes, there are. That's the
10:42 5 enforcement of discretion I was talking about. There is
6 requirements after reported release, time frames within
7 which you are supposed to have characterized and worked
8 toward cleaning up our site.

9 MR. BUNCH: I noticed in the pie chart that there
10:43 10 was still 21 percent of our Fund-eligible releases that
11 weren't characterized, which is, I guess, 80 or 90 sites,
12 and I always thought you had to have them characterized
13 within a year, was my understanding. So maybe the answer
14 is enforcement as opposed to our drawing a line.

10:43 15 MR. FULTON: Now I will go back to the discretion
16 I talked about, which is enforce against someone of
17 limited means and be ready for the consequences, which is
18 pushing someone right into financial insolvency and then a
19 new orphan site, so we had to balance our aggressiveness
10:43 20 on enforcement with that real financial reality.

21 CHAIRPERSON CLEMENT: I think the time frame that
22 I'm looking at is 2006, there had to be an eligibility
23 cutoff; right?

24 MR. FULTON: Yes.

10:43 25 CHAIRPERSON CLEMENT: So we're now in 2009, which

1 is three years later, if we add two to four years, you
2 know, most sites should be characterized and cleaned up
3 if there is a process moving forward and the agency is
4 responsive to submittals and they have competent
10:44 5 consulting, and I think that's a reasonable period of
6 time. Three years might be a little tight given the
7 current economic situation, but certainly five to, you
8 know, seven-year period should be sufficient, and we're
9 not talking about, I don't believe any of us are talking
10:44 10 about opening up eligibility.

11 MR. FULTON: As a nonadvocate, as a discussor at
12 this point, we might be oversimplifying by thinking that
13 just the amount of time it would take to get these sites
14 cleaned up is the only factor going into how long it might
10:44 15 be extended. To the extent that the excise tax might be
16 being extended for other reasons that we don't quite
17 understand or know exactly how long it might be looked at
18 as a revenue enhancement for the State, it's going to be
19 tough for us to come up with a number.

10:45 20 But it's going to be very -- as you pointed out,
21 nobody is interested in open-ended tax extensions, so a
22 date will have to be picked. How it's going to be picked
23 might require more people to be in this room.

24 CHAIRPERSON CLEMENT: Well, we are the Commission
10:45 25 and are tasked with providing recommendations, and I am

1 adamantly opposed to an open-ended extension, and I will
2 vote against it.

3 So, we can come up with a date and we can say in
4 that date that, depending on circumstances, the
10:45 5 legislature should review this, you know, in consideration
6 of the economic climate and the state of the Assurance
7 Fund and cleanups at that point in time, you know, but I
8 cannot support an open-ended extension personally.

9 MR. BUNCH: So, am I hearing, we can throw a date
10:46 10 out but recommend that the legislature kind of check with
11 the stakeholders to see if that date is legitimate?

12 CHAIRPERSON CLEMENT: Well, we recommend a date.
13 We also recommend that as that date approaches, just like
14 we're doing today, we've all anticipated that the 2010
10:46 15 date would be sufficient. Well, they need to evaluate as
16 that date approaches whether that extension, that another
17 extension needs to be made, but to leave it open-ended is
18 really inappropriate, I think.

19 Ms. Gaylord.

10:46 20 MS. GAYLORD: I agree. I think we do have to be
21 cognizant of unintended consequences. We are sort of
22 handing the legislature on a silver platter an opportunity
23 to get increased revenues from a new tax without taking
24 political heat for it.

10:46 25 And so to the extent this turns out to be an

1 extension of the tax that then just flows to the general
2 fund instead of the UST stakeholders, we haven't done our
3 job.

4 So I really do feel as adamantly as you do that I
10:47 5 would also vote against an open-ended tax extension. I
6 think that we do need to be diligent in trying to make our
7 case that the funds are well spent in the UST program,
8 that we are doing the State a service by having these
9 releases cleaned up.

10:47 10 CHAIRPERSON CLEMENT: So, we're talking two
11 separate items here. One is extension of the tax and
12 providing an end point for that, and then the other is
13 extension of eligibility -- or, excuse me, not eligibility
14 -- payment of claims and providing an end point for that.

10:47 15 Perhaps we could make it, these things should be
16 linked, we should put a statement in there about, you
17 know, the excise tax should continue as long as the
18 eligibility and the need to build a fund is necessary.

19 Because, I mean, if this continues for five
10:47 20 years -- I mean, heaven forbid, but they are going to be
21 forced to continue pulling money out of whatever sources
22 they can.

23 Ms. Gaylord.

24 MS. GAYLORD: I think that we've got some tough
10:48 25 choices, and I certainly don't feel that there is a clear

1 right answer, but I guess I would throw out the idea of a
2 four-year extension of both the eligibility, the claims
3 eligibility and the tax.

4 I do fear that if we -- if we don't make the case
10:48 5 that the funds need to be spent on the UST program because
6 there is a deadline when we have people that need to use
7 those funds to clean up in their sites, we don't make that
8 case, and I think we increase the likelihood of perpetual
9 transfers to the general fund.

10:48 10 CHAIRPERSON CLEMENT: It's probably independent,
11 it's going to be a budget until we reach consideration,
12 politically.

13 So, we have a proposal, I think. This will be
14 the first vote I would suggest that we take. We have a
10:48 15 proposal for a four-year extension for both the tax and
16 SAF payment eligibility.

17 Is there any other date, any discussion on that?

18 Mr. Bunch.

19 MR. BUNCH: I want to make sure I understand
10:49 20 Karen's concern on the four-year cap for the excise tax.
21 You are here to support the idea of money coming in the
22 fund to go to the UST program. Is that the underlying
23 concern?

24 MS. GAYLORD: Well, and I really don't -- I'm
10:49 25 very confused on this, I really am, about what we should

1 do about the two time frames, whether they should be the
2 same time frame or different and what they should be, and
3 so I really am just throwing that idea out for discussion
4 because, maybe the Chairperson's point is well taken,
10:49 5 maybe it doesn't matter what time frame we pick, it won't
6 affect the likelihood of transfers.

7 I just can't quite figure out what we can do to
8 ensure that the Fund ends as -- sorry -- the tax ends at
9 the appropriate time and that we maximize the likelihood
10:49 10 that we will have enough money in the fund at the end to
11 take care of these continuing obligations.

12 CHAIRPERSON CLEMENT: Yes, I agree with that. I
13 think perhaps what we can do is add to our first bullet --
14 or second bullet that concept, that, although, you know,
10:50 15 we can't predict, nor can the legislature, frankly,
16 predict what the economic conditions in the future are
17 going to be over the next four years, we just don't know,
18 and so perhaps what we can do in that bullet is state what
19 you just stated, which is the Fund -- or the excise tax
10:50 20 should be extended to the point that it fully funds the
21 program and meets its incurred obligations.

22 What do you think about that?

23 I'm writing it down just so I don't forget it,
24 and that avoids having to put a date there. You know, I'm
10:51 25 open here. I really want some help.

1 MR. BUNCH: Well, I mean, the one theme that I
2 hear over and over again and every time we open the
3 newspaper or turn on the news, we see that the State
4 doesn't have money.

10:51 5 I'm confused as to why we would want to put a cap
6 on income coming into the State, paying excise tax, I'm
7 not sure why we even want to say that \$30 million a year
8 is not good for the State of Arizona. Right now we have
9 short-term releases with respect to the SAF and also the
10:51 10 Regulated Substance Fund, but long-term we don't have any
11 money in the State. I'm not sure why we'd want to
12 advocate a cap to that. I'm not sure anybody would
13 benefit from that excise tax not being charged. I'm not
14 sure we'd see retail prices move. I'm not sure why we
10:52 15 would want to take away income to the State.

16 CHAIRPERSON CLEMENT: Any other discussion on
17 that?

18 That has quite a bit of appeal, actually. But we
19 could say as a minimum, extend the tax to the point to
10:52 20 fully fund the program and to meet its incurred
21 obligations.

22 MR. BUNCH: I feel better with that.

23 CHAIRPERSON CLEMENT: Any other discussion on
24 that?

10:52 25 MR. FULTON: At risk of muddying the water a

1 little more --

2 CHAIRPERSON CLEMENT: Please.

3 MR. FULTON: -- I just saved my best for last.

4 One of the possibilities could be not only just talking
10:52 5 about the extension of the tax, but I'm assuming built
6 into that implicitly is that the dates set forth for
7 sunset of 1306 are going to be all -- going to terminate
8 the Fund and push that all out some coterminous amount of
9 time, is that how we're picturing how it's going to work?

10:53 10 The Fund is still going to sunset. 1306 still
11 sits out there with these dates and that doesn't have to
12 be adjusted and fixed accordingly, those that haven't come
13 and gone, as long as we're not going back in time.

14 CHAIRPERSON CLEMENT: I think that's why if we
10:53 15 add the language "extend to the point the fully funded
16 program to meet its incurred obligations" puts that into
17 framework.

18 MR. FULTON: Implicit in that is if we have \$60
19 million available to do, that could take who knows how
10:53 20 long, depends on transfers.

21 CHAIRPERSON CLEMENT: Right. Depends on how much
22 they take out and how much they spend, but the takeout is
23 the biggest variable, and that's all based on future
24 economic conditions none of us really can predict.

10:53 25 Ms. Gaylord.

1 MS. GAYLORD: To that point, I believe the way it
2 currently reads is end date certain or 60 million,
3 whichever comes first, and I think that what we need to
4 decide is, is that how we're going to structure this, is
10:54 5 it \$60 million or some date certain, whichever is first,
6 whichever is last.

7 MR. FULTON: Or they both have to happen.

8 MS. GAYLORD: Or they both have to happen.

9 MR. FULTON: There's a -- that's a very important
10:54 10 operative word in how the sunset was set, whichever comes
11 first, and it was "or" or should it be an "and". That's
12 the nuance.

13 CHAIRPERSON CLEMENT: Well, you know, we're
14 getting nuanced into the language of the legislature, and
10:54 15 I'm still trying to get a concept here, and if we want the
16 Fund to be extended, or the tax collection to be extended,
17 what do we want it to be extended for. We want it to be
18 extended for the purposes that are identified in 1306.

19 Ms. Gaylord.

10:54 20 MS. GAYLORD: May I suggest --

21 CHAIRPERSON CLEMENT: Yes.

22 MS. GAYLORD: -- that we -- one idea is to extend
23 it until there is \$60 million in the Fund, but in no event
24 will it end before 2014. That's the only question I was
10:55 25 asking before, it was more a concept question than a

1 language question. Are we just going to have it
2 open-ended so the Fund stays in effect until there is \$60
3 million? Do we have a set of dates as boundaries, so, in
4 no event before 2014 and no event after 2020, if it
10:55 5 reaches \$60 million in the middle somewhere, it ends at
6 \$60 million.

7 CHAIRPERSON CLEMENT: You know, I think we're
8 getting too nuanced there, frankly.

9 MR. FULTON: I'm sorry. I just brought that up
10:55 10 just to try to redefine the conditions upon the sunset.
11 We need to keep looking back at, the Commission is still
12 committed to or wants to still advocate the Fund's sunset.
13 Here's the set of rules that were put forward in 1306.
14 Those should still be in effect as a condition of sunset
10:56 15 and to help us establish our end point, whatever time line
16 that turns out to be.

17 I know there's been other discussion, I think, in
18 some of the subcommittees about those conditions upon
19 which the Fund was sunset, should those be changed too.
10:56 20 60 million isn't a great measure of when the Fund should
21 be sunsetted. For diversion, it's time for another
22 discussion there, should that sunset be connected to some
23 other performance measure, like number of sites closed or
24 whatnot.

10:56 25 But, I think just to add some detail to an

1 unknown date, we could refer to the 1306 conditions as
2 being replicated.

3 CHAIRPERSON CLEMENT: I want to keep it simple
4 because I know who we're dealing with, and I think that if
10:57 5 we say to meet its obligations, incurred obligations, and
6 perhaps to address other -- you know, I don't know the
7 bill enough, frankly, to know what's important in those
8 other deadlines, but, you know --

9 MR. FULTON: I suggest those as open discussion.
10:57 10 I think the letter is going to be fine just so that we
11 have an understanding of what obligations mean, and I
12 think 1306 puts those together as the obligations we've
13 been operating under and the assumptions are those, I
14 think, are going to be pretty good with this as long as we
10:57 15 consciously know what obligations is met. That's all I
16 was trying to bring forward.

17 CHAIRPERSON CLEMENT: Okay. So we have -- sorry
18 everybody. This is crafting by sentence and group therapy
19 at the same time, so we will get there, though.

10:57 20 We have two concepts in this second bullet point.
21 One is to extend the Fund until \$60 million. We could do
22 an "and". And to the point that the Fund is extended to
23 fully meet the program's obligations, to fully fund the
24 program to meet its incurred obligations, is what I had
10:58 25 written originally.

1 Do we have an opinion on that one? I'm of the
2 flavor of keeping it broad, but, Ms. Gaylord.

3 MS. GAYLORD: I guess I would prefer the option
4 of saying until the fund hits \$60 million, and the only
10:58 5 reason for that is there's never really been an agreement
6 on what the obligations of the program were or how much it
7 would cost, and I think we don't have any help with
8 achieving consensus on that because we simply don't have
9 the information we would need to figure out how much it
10:58 10 would cost, and I think the \$60 million was a good guess.

11 CHAIRPERSON CLEMENT: But you know where I'm
12 coming from with incurred obligations, it's not the \$60
13 million just, it's the incurred obligations to pay back to
14 the owners and operators and the volunteers. The 60
10:59 15 million is the set aside, it's the operating -- all the
16 costs that go into the program besides the \$60 million set
17 aside, that's what I was going with incurred obligations.
18 We don't know what's going to be in that arena right now,
19 so that's why I was hoping to keep that general.

10:59 20 I mean, we could say "and".

21 MS. GAYLORD: I see your point now. I understand
22 completely. How about "including"?

23 CHAIRPERSON CLEMENT: Okay. "Including", and
24 what's the name of that \$60 million fund again?

10:59 25 MR. FULTON: That would have been the amount of

1 money available for transfer to the Regulated Substance
2 Fund.

3 CHAIRPERSON CLEMENT: To be transferred to the
4 Regulated Substance Fund as originally set by the
11:00 5 legislature. Well, they did.

6 Okay. Okay. So now we have, I think, something
7 that most of us might be able to live with in the second
8 bullet, and I'm going to paraphrase it, and I will clean
9 it up once this letter is drafted, but this is the
11:00 10 intention, and I'm going to read it and then I'm going to
11 ask for a motion.

12 MR. FINDLEY: The second bullet?

13 CHAIRPERSON CLEMENT: The second bullet we're on
14 still, yes. We skipped back to it. Sorry.

11:00 15 "The legislature should extend the existing
16 excise tax past its current expiration date (December 31,
17 2013), or provide alternative funding sources as
18 recommended in our November 11, 2009 letter. The Fund
19 should be extended to fully fund -- the excise tax should
11:01 20 be extended to fully fund the program to meet its incurred
21 obligations, including the \$60 million fund to be
22 transferred to the Regulated Substance Fund as originally
23 intended by the legislature."

24 And that's about close as I'm going to get right
11:01 25 now. Okay.

1 MR. BUNCH: And I guess before we vote on that,
2 did the original letter just advocate an open-ended
3 extension?

4 CHAIRPERSON CLEMENT: I believe it did.

11:01 5 MR. BUNCH: Are we just vehemently opposed to an
6 open-ended extension letter? I'm supportive of an
7 open-ended extension just as a taxpayer in the State of
8 Arizona. We just don't want to leave that as is because
9 we're kind of conditioning our initial position.

11:02 10 CHAIRPERSON CLEMENT: Well, I think one of the
11 concerns we have is that it will not be extended to meet
12 these obligations. It will be extended to meet the
13 general fund and not the UST obligations, and so that's
14 why we're tightening this language to make sure that --
11:02 15 you could say at a minimum.

16 MR. BUNCH: Yeah. I mean, that's another way --
17 if that's the aim, we could say, if you are going to do
18 it, at a bare minimum, you better make sure that you
19 support the fund that was intended to take care of.

11:02 20 CHAIRPERSON CLEMENT: Okay.

21 MR. BUNCH: Karen made a good point. We are
22 handing them on a silver platter the ability for income,
23 without making it look like a tax increase, which is what
24 the State needs, and we just want a few things in return
11:02 25 for that.

1 CHAIRPERSON CLEMENT: Okay. Here's -- "at a
2 minimum, the excise tax should be extended to meet -- to
3 fully fund the program to meet it's incurred obligations,
4 including \$60 million to be transferred to the Regulated
11:03 5 Substance Fund as originally intended by the legislature."

6 Are we good with that? And I will clean it -- it
7 will be prettier, but the concept is down now.

8 Okay. Is there a motion to approve that?

9 MR. BUNCH: I move we approve that.

11:03 10 CHAIRPERSON CLEMENT: Is there a second?

11 MS. GAYLORD: Second.

12 CHAIRPERSON CLEMENT: All in favor?

13 (Chorus of ayes.)

14 CHAIRPERSON CLEMENT: And we have two abstaining.

11:03 15 Okay. Let's do a roll call, then, for the vote.

16 Ms. Huddleston, do you abstain?

17 MS. HUDDLESTON: Yes.

18 CHAIRPERSON CLEMENT: Mr. Fulton?

19 MR. FULTON: Abstain.

11:03 20 CHAIRPERSON CLEMENT: Ms. Kalaghan?

21 MS. KALAGHAN: Aye.

22 CHAIRPERSON CLEMENT: Clement. Aye.

23 Mr. Findley?

24 MR. FINDLEY: Aye.

11:03 25 CHAIRPERSON CLEMENT: Mr. Bunch?

1 MR. BUNCH: Aye.

2 CHAIRPERSON CLEMENT: Ms. Gaylord?

3 MS. GAYLORD: Aye.

4 CHAIRPERSON CLEMENT: Okay. Motion passes.

11:03 5 Okay. Now we're back to bullet number three,
6 which I thought would take the whole day.

7 THE COURT REPORTER: Could we take a break? It's
8 been two hours.

9 CHAIRPERSON CLEMENT: Oh, sure, we'll take a
11:04 10 ten-minute break. I'm sorry, folks, we'll be back in ten.

11 (A recess was taken at 11:04 a.m.; resumed at
12 11:11 a.m.)

13 CHAIRPERSON CLEMENT: Okay. We're back. We're
14 on the record again.

11:11 15 We're on item -- bullet number 3, page 3,
16 extension of the deadline for submitting claims for
17 reimbursement. We are now on the question of the time
18 period for the extension, and I have proposed anywhere
19 from two to four years as a potential.

11:11 20 Is there any discussion on that, a particular
21 time frame?

22 Ms. Gaylord.

23 MS. GAYLORD: I absolutely agree with your
24 suggestion. 2013 is a year being thrown around as the
11:11 25 year where we might see a turnaround of the economy. That

1 might justify an extension to 2014.

2 CHAIRPERSON CLEMENT: Any other discussion?

3 That's a long extension, Ms. Gaylord.

4 MS. GAYLORD: And let me clarify that that would
11:12 5 be the absolute longest I would support. If you look at
6 enforcement, arguably, even with tough economic times,
7 even with stringing the work out along, it should be done
8 well before then, so I could certainly support a shorter
9 time frame as well.

11:12 10 CHAIRPERSON CLEMENT: I would like to put on the
11 table a three-year extension. Is there any discussion on
12 that?

13 Okay. Let's craft this paragraph all together.
14 Okay. And then the third bullet that we were talking
11:12 15 about was, should there be a validation of specific
16 conditions or criteria that should be met to achieve an
17 extension. And, either we spell it out or the
18 Department's discretion. One does not want to reward
19 either incompetence or negligence.

11:13 20 MS. KALAGHAN: On the other hand, I think adding
21 criteria would just create an administrative burden for
22 the Department that would be unreasonable.

23 MR. BUNCH: You know, at the end of the day, and
24 I understand people's concerns about, you know, geez, this
11:13 25 operator over here just sat on his releases and another

1 guy diligently did his, but I go back to what's best for
2 the State of Arizona. I mean, to me that's where it all
3 shakes down. And, unfortunately, some folks may catch a
4 break, but at the end of the day, you know, I think we'll
11:13 5 be better off if we just allow all these releases in the
6 sunset to move forward.

7 I think we'll struggle trying to develop criteria
8 and subjectivity in a government process in my mind is
9 probably not a, you know, a good way to go, so, you know,
11:14 10 I would just advocate let's get these sites cleaned up and
11 move on.

12 CHAIRPERSON CLEMENT: So, there's two sides to
13 that validation sort of conditions. One is that there has
14 to be some enforceable agreement with time frames, that's
11:14 15 a proactive sort of thing. And the other one is that they
16 have met conditions from the past, that they weren't under
17 an order, I don't know, that they hadn't met -- we are
18 starting to now craft rule, actually, rather than a
19 recommendation letter.

11:14 20 But I throw this out because I think we've had
21 some very poignant public comment to this, and I have seen
22 situations, personally, on some of my WQARF work where,
23 you know, sites have not moved forward very rapidly.

24 So, any other opinions on that?

11:15 25 Ms. Gaylord.

1 MS. GAYLORD: I would just add a fear that we're
2 going to lose more agency folks, rule writers, internal
3 capacity to develop guidance or rules, so I think to the
4 extent that we had a need for rules, guidance or
11:15 5 development of criteria in order to implement a
6 case-by-case extension, I would be concerned about the
7 burden on the Department.

8 CHAIRPERSON CLEMENT: Does the Department have an
9 opinion on any of that?

11:15 10 MR. FULTON: I agree with that, to the extent
11 that we talked about subjective terms, like good faith.

12 Are we running short of appeals yet, Tara?

13 MS. ROSIE: Are we running out of appeals?

14 MR. FULTON: Right.

11:15 15 MS. ROSIE: No.

16 MR. FULTON: Could we add to them? Would that be
17 fun?

18 MS. ROSIE: No.

19 MR. FULTON: I agree, there are terms of equity,
11:15 20 but there's a reality that implementing that sort of a
21 criterion, we would have to talk about rules, because
22 these would be appealable actions to not include somebody
23 as an extension, and then we talk about subjective terms
24 like good faith, going back, recreating a record since a
11:16 25 release was reported could be a lot of effort, I agree, so

1 there's my quick analysis of that.

2 CHAIRPERSON CLEMENT: Okay. Any other comments
3 or discussions on that point?

4 Okay. So, if we were to add a three-year
11:16 5 extension, this paragraph would read, "If the excise
6 taxes" -- this is how it is stated at this point in time.

7 "If the excise tax is extended, the current
8 deadline for submitting claims for reimbursement should be
9 extended by an amount sufficient to allow cleanup work at
11:16 10 sites identified to be completed."

11 We've talked here about a three-year -- if the
12 excise -- and do we want a condition on if the excise tax
13 is extended. Well, if the excise tax isn't extended,
14 there is no money to pay the claims, so I guess the
11:17 15 condition is important.

16 The current deadline for submitting claims for
17 reimbursement should be extended by a three-year period.

18 Okay. Any discussion on that?

19 Okay. Is there a motion?

11:17 20 MR. BUNCH: I move we approve that paragraph.

21 MS. GAYLORD: I second.

22 CHAIRPERSON CLEMENT: And Ms. Gaylord is a
23 second. Okay. Let's do a roll call.

24 Mr. Fulton?

11:17 25 MR. FULTON: Abstain.

1 CHAIRPERSON CLEMENT: Ms. Kalaghan?
2 MS. KALAGHAN: Yea.
3 CHAIRPERSON CLEMENT: Ms. Clement? Yes.
4 Mr. Findley?
11:17 5 MR. FINDLEY: Aye.
6 CHAIRPERSON CLEMENT: Mr. Bunch?
7 MR. BUNCH: Aye.
8 CHAIRPERSON CLEMENT: Ms. Gaylord?
9 MS. GAYLORD: Aye.
11:17 10 CHAIRPERSON CLEMENT: That took a lot for Ms.
11 Clement.
12 Okay. That excise tax recommendation for a
13 three-year period to be extended.
14 And then the last bullet here is something that I
11:18 15 wholeheartedly support. "The universe of sites at which
16 SAF reimbursement is allowed should not be expended beyond
17 its current level."
18 Are there any discussion points on that?
19 Mr. Bunch.
11:18 20 MR. BUNCH: I guess I would question why that
21 would even need to be stated. That's certainly the way
22 the current legislation is written. To me, it sort of
23 limits future solutions that we might want to contemplate
24 because there are issues around private insurance. I
11:18 25 think we're now just starting to understand the

1 consequences of migrating from a State Assurance Fund to a
2 private insurance environment, and I think it is fair to
3 say stakeholders have expressed concerns about the current
4 disposition of liabilities and how the interactions with
11:19 5 insurance companies are going.

6 So, to me staying silent supports the status quo
7 and it will allow future work by the Evaluation
8 Subcommittee, possibly UST Policy Commission, dealing with
9 these larger issues around environmental liability with
11:19 10 UST releases.

11 CHAIRPERSON CLEMENT: I guess to counterpoint
12 that, I can't support this letter unless there is that
13 provision in it so that it's very clear that, at least
14 from my point of view, that we are not recommending that
11:19 15 SAF eligibility is being reopened, we are just
16 recommending that those eligible claims be extended and
17 that the excise tax be extended.

18 And so, any other discussion on that?

19 Ms. Gaylord.

11:19 20 MS. GAYLORD: I also strongly support the
21 statement. I don't think it precludes the State from
22 addressing new programs in the future, but to the extent
23 that someone wanted to use this vehicle as a mechanism to
24 expand eligibility to today, that would be devastating.
11:20 25 None of our agencies have the ability at this point to

1 take on new program initiatives of that sweeping nature in
2 this budget time, and I just think that we should be clear
3 so that this vehicle remains focused on the claims
4 deadline and the extension of the tax and that no one
11:20 5 comes in, and if someone does try to come in and extend
6 it, we'll at least know that that wasn't our intent
7 reopening this.

8 CHAIRPERSON CLEMENT: And at this point in time,
9 until we have evidence that SAF eligibility needs to be
11:20 10 extended by some factual database or series of
11 information, I can't support any extension, and I don't
12 want it to be unspoken personally.

13 So, any other discussion on that?

14 Is there a motion to approve this last bullet as
11:20 15 written?

16 MS. GAYLORD: I will move to approve the last
17 bullet as written.

18 CHAIRPERSON CLEMENT: And I will second that
19 motion, and then we will do a roll call.

11:21 20 Mr. Fulton?

21 MR. FULTON: Abstain.

22 CHAIRPERSON CLEMENT: Ms. Kalaghan?

23 MS. KALAGHAN: Yes.

24 CHAIRPERSON CLEMENT: Ms. Clement. Yes.

11:21 25 Mr. Findley?

1 MR. FINDLEY: Yes.

2 CHAIRPERSON CLEMENT: Mr. Bunch?

3 MR. BUNCH: In the interest of compromise, I will
4 say yes.

11:21 5 CHAIRPERSON CLEMENT: Ms. Gaylord?

6 MS. GAYLORD: Yes.

7 CHAIRPERSON CLEMENT: Okay. Now, have the
8 components of the letter been approved, or do we need to
9 approve the whole letter?

11:21 10 MS. HUDDLESTON: Yes.

11 CHAIRPERSON CLEMENT: Okay.

12 Is there a motion to approve the letter as we've
13 redone it and approved individual components of it?

14 MS. GAYLORD: I'll move to approve the letter as
11:21 15 discussed today, the concepts that we've agreed on
16 throughout letter, and I would move to give the Chair the
17 ability to polish the specific words.

18 CHAIRPERSON CLEMENT: Is there a second?

19 MR. BUNCH: I second.

11:21 20 CHAIRPERSON CLEMENT: Okay. We will do another
21 roll call.

22 Mr. Fulton?

23 MR. FULTON: Abstain.

24 CHAIRPERSON CLEMENT: Ms. Kalaghan?

11:21 25 MS. KALAGHAN: Yes.

1 CHAIRPERSON CLEMENT: Ms. Clement? Yes.
2 Mr. Findley?
3 MR. FINDLEY: Yes.
4 CHAIRPERSON CLEMENT: Mr. Bunch?
11:22 5 MR. BUNCH: Aye. I had to.
6 CHAIRPERSON CLEMENT: And, Ms. Gaylord?
7 MS. GAYLORD: Yes.
8 CHAIRPERSON CLEMENT: Okay. We have an approved
9 letter. I will draft that, and I may send that out to the
11:22 10 Evaluation Subcommittee Chair and Ms. Gaylord for final
11 review just make sure I captured everything, if that's
12 acceptable, and we will get that out ASAP, hopefully this
13 week, so, if you can, be responsive.
14 Okay. Summary of meeting action items. The only
11:22 15 thing that I actually had was, besides my to do, was Mike
16 was going to verify the transfer -- Mr. Fulton was going
17 to verify the transfer number, and that is the only thing
18 that I actually had as far as an action item.
19 Okay. Agenda items and schedule for the next
11:22 20 Commission meeting. The agenda will be similar to the
21 last one.
22 I do want to discuss whether we have a need for
23 the January 27th meeting. Our next meeting would be in
24 March, and it's March -- I don't have March.
11:23 25 MR. FINDLEY: March 24th.

1 CHAIRPERSON CLEMENT: March 24th. Thank you, Mr.
2 Findley. March 24th.

3 So, do we have a need for a January 27th meeting,
4 or at least hold it into our schedule?

11:23 5 MR. BUNCH: I'm not sure. From my end, I don't
6 see a need for one, but I might be missing something. Mr.
7 Fulton had indicated that there may be a need.

8 MR. FULTON: No. We've held it as a meeting and
9 we've kept the room, so it's at your pleasure.

11:23 10 CHAIRPERSON CLEMENT: Ms. Kalaghan?

11 MS. KALAGHAN: I don't see a need for the
12 meeting.

13 CHAIRPERSON CLEMENT: Mr. Findley?

14 MR. FINDLEY: I see no need.

11:23 15 CHAIRPERSON CLEMENT: Ms. Gaylord?

16 MS. GAYLORD: I don't see any need.

17 CHAIRPERSON CLEMENT: Unless I hear from the
18 regulated community, stakeholders, or others, we will not
19 hold the January 27th meeting. We'll hold the March 24th
11:24 20 meeting as our next meeting.

21 Okay, on that note, the January 11th, 2010 UST
22 Policy Commission meeting is adjourned. Thank you all for
23 participating.

24 (11:24 A.M.)

25

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

C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 96 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 11th day of January, 2010.


Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477