

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
MOTOR FUELS UNDERGROUND STORAGE TANK TRUST
FUND ADVISORY BOARD

The above-entitled meeting was held at the LDEQ, Galvez Building, Conference Center, 602 North 5th Street, Baton Rouge, Louisiana, beginning at 1:00 p.m., on August 17, 2017.

BEFORE:

Mark Lacour
Certified Court Reporter
In and For the State of
Louisiana

A P P E A R A N C E S

Kerry Hill
Chairman

Durwood Franklin
Jeff Baker
Gary Fulton
Cy Morin
Perry Theriot
Nick St. Romain
Steve Burnham
Roger Bright
Theresa Delafosse
Frank Marcello

Melissa Vizinat
Sam Broussard
Jason Efferson
Natalie Isaacks
Roger Gingles
Todd Perry
Fran Falke
Lacey Vitteri
Bryon Blanchard
Shawn King
Oscar Magee
Karyn Andrews

* * * * *

I N D E X

EXAMINATION :

PAGE (S) :

None

EXHIBITS :

None

REPORTER'S PAGE

79

REPORTER'S CERTIFICATE

80

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MR. HILL:

At this time, I'd like to call our meeting to order. Good evening, ladies -- good morning, ladies and gentlemen.

MR. MARCELLO:

Good afternoon.

MR. HILL:

Good afternoon.

MR. MARCELLO:

Good afternoon.

MR. HILL:

Good afternoon. Let me clarify that.

At this time, we'd like a roll call and consideration and adoption of the June 8, 2017, board minutes. We'll start on this end with roll call.

MS. DELAFOSSE:

Theresa Delafosse, DEQ Financial Services.

MR. MORIN:

Cy Morin, LDEQ Audit.

MS. VIZINAT:

Melissa Vizinat, DEQ Trust Fund.

MR. BRIGHT:

1 Roger Bright, Jones Environmental.

2 MR. BURNHAM:

3 Steve Burnham, Engineering Associates.

4 MR. ST. ROMAIN:

5 Nick St. Romain, Louisiana Oil
6 Marketers and Convenience Store Association.

7 MR. MARCELLO:

8 Frank Marcello, Louisiana Oil
9 Marketers and Convenience Store Association.

10 MR. HILL:

11 Kerry Hill, Louisiana Oil Marketers
12 and Convenience Store Association.

13 MR. THERIOT:

14 Perry Theriot, LDEQ Legal.

15 MR. FRANKLIN:

16 Durwood Franklin, DEQ Trust Fund.

17 MR. BAKER:

18 Jeff Baker, DEQ Trust Fund.

19 MR. FULTON:

20 Gary Fulton, Underground Storage Tank
21 Division.

22 MR. HILL:

23 Thank you.

24 Do I hear a motion to adopt the June
25 8, 2017 board minutes?

1 (An off-the-record discussion followed.)

2 MR. PERRY:

3 Todd Perry, PPM Consultants.

4 MR. KING:

5 Shawn King, Jones Environmental.

6 MR. BROUSSARD:

7 Sam Broussard, UST Division.

8 MR. EFFERSON:

9 Jason Efferson, DEQ Trust Fund.

10 MR. MAGEE:

11 Oscar Magee, DEQ.

12 MS. FALKE:

13 Fran Falke, DEQ Financial Services.

14 MS. VITTERI:

15 Lacey Vitteri, DEQ Financial Services.

16 MR. BLANCHARD:

17 Byron Blanchard, DEQ Audit.

18 MS. ANDREWS:

19 Karyn Andrews, DEQ Undersecretary.

20 MS. ISAACKS:

21 Natalie Isaacks, Louisiana Oil
22 Marketers.

23 MR. GINGLES:

24 Roger Gingles, DEQ Office of the
25 Secretary.

1 MR. HILL:

2 Is that everyone? Thank ya'll. I'm
3 sorry about that.

4 Could we now have consideration and
5 adoption of the June 8, 2017 board minutes?
6 Do I hear a motion?

7 MR. MARCELLO:

8 So moved, Mr. Chairman.

9 MR. HILL:

10 Can I get a second?

11 MR. BRIGHT:

12 Second.

13 MR. HILL:

14 Okay. Thank ya'll.

15 We'll go to item number three, the
16 financial services report by Theresa.

17 MS. DELAFOSSE:

18 I guess I'm going to do it from the
19 podium today.

20 (An off-the-record discussion followed.)

21 MS. DELAFOSSE:

22 Okay. So I -- we did this
23 presentation at the last board meeting,
24 which was the third quarter of fiscal year
25 2017, and the board indicated that they

1 would like a longer, more in-depth
2 presentation at the board meetings, going
3 forward. I'll also go over the financial
4 statement, which you do have in your packet.
5 Unfortunately, the presentation, the power
6 point presentation was not quite ready. The
7 correct one you need is in the packet, so
8 that's why you have a paper copy with you
9 now. But I can send an electronic version
10 as well, if anybody would like that. And I
11 hope to have the electronic version -- or
12 the printed version included in the packet
13 for the next -- for the first quarter of
14 2018's board meeting. So apologies for
15 that. But hopefully, everybody can follow
16 along.

17 So this was not a slide that was
18 included in the presentation at the last
19 meeting, but I did want to just include a
20 six year history of the bulk distribution
21 fee revenues. That's the .008. So it's
22 very steady, as you'll see. No change of
23 over -- 1.42 percent was the highest change
24 from one year to the next. It stays pretty
25 steady in the high 22 million range. So

1 that's a very consistent source of revenue
2 for the program.

3 The interest income, I added here
4 because it had been increasing. It's
5 increasing because of the rates at the
6 treasury are better. But it's also
7 increasing because the dollar value in the
8 fund is higher. So we have -- you know, 100
9 million dollars draws more interest than if
10 you had 800 dollars. So you'll see in
11 fiscal year 2017, this year that we just
12 closed out, and we're finishing all the
13 paperwork and everything for, we -- we got
14 over a half a million dollars in interest.

15 This slide was in the last
16 presentation. I did -- I didn't leave the
17 last quarter information in here. I just
18 put the final numbers for 2017. It just
19 shows what all the expenditures are for the
20 administrative portion of the program, what
21 percent each category of expenditures makes
22 of the total. So as you can see, there's
23 four major components and then five very
24 minor components. So -- and the biggest
25 component, of course, is the salaries at

1 38.8 percent.

2 And ya'll can feel free to stop me at
3 any time you have questions.

4 So here's a slide with more
5 information on salaries. I did include --
6 what we included in the last was the as of
7 date for the quarter, so nine out of twelve
8 months of the year. And then, we had a
9 projected total for the entire year. So
10 I've included the projected here so you can
11 see that -- that, you know, our actual was
12 very close to the projected for the year.
13 It came in slightly over, at about \$20,000
14 over what we projected for salaries. And
15 the related benefits, you know, there is a
16 relationship between those two. So if
17 salaries goes up, related benefits always
18 goes up. And that was about an \$11,000
19 increase over our projection. But still
20 very -- very good and in close projection.

21 So it includes, as I mentioned the
22 last time, the following mandatory
23 expenditures: the retirement costs are 35.8
24 percent per employee. I believe that went
25 up to around 37 percent for fiscal year

1 2018. So there will be a slight uptake in
2 the related benefits. The group benefits
3 costs, those are elected by employees. But
4 you'll see that 46 of the 47 employees that
5 are dedicated to work for the motor fuel
6 program do elect some portion, some or all
7 of the group benefits that are offered by
8 the state and -- with an average of 3,400
9 per employee. And, of course, we have to
10 pay Medicare, which is small compared to
11 retirement and group benefits, but it is --
12 it is a mandatory related benefit cost for
13 those employees -- or for all employees.

14 Not included in the slides, but ya'll
15 have likely seen in the news that there was
16 a new compensation plan for state employees
17 that civil service recommended and drafted
18 and the Governor approved. That will
19 include a two percent pay raise for all
20 state employees on January 1st. And then the
21 pay ranges for employees are changing, as
22 well. The minimums are increasing and the
23 maximums are increasing. That will mean an
24 increase for -- in fiscal year 2018 in the
25 cost of -- of the employees and the cost for

1 the motor fuel trust fund because of those
2 changes, because we have a fair amount of
3 employees that aren't at the new minimum.
4 And those new minimums go into effect on
5 January 2nd. So for the second half of the
6 year, some employees may be making, you
7 know, considerably more than they are at
8 this time, because those minimums changed
9 and they're at the -- they're below the new
10 minimum.

11 So I don't have a new projection on
12 what they may look like for the year, but
13 once the first quarter closes, we should
14 have some better information on that. But,
15 you know, definitely in January -- you know,
16 the end of next year. But we just put out
17 some projects to give ya'll an idea of what
18 the salaries may look like for fiscal year
19 2018.

20 These are all the employees that are
21 dedicated to the fund and dedicated to the
22 work of the program. I had this same slide
23 last time. There were not substantial
24 changes from before. Still the most -- the
25 first job title, the environmental scientist

1 three with 14 of those. The only little --
2 the only changes were kinda between what we
3 call career profession groups. So like the
4 environmental project specialist III, you
5 see, previously, some of those people were a
6 II and they got what's called reallocated
7 because they were doing everything they
8 needed to do and we're glad to have them
9 here, so they got a little bump to the next
10 category. So there were only small
11 movements within -- within those ranges.
12 But in general, we have the same number of
13 employees for the program.

14 I will say that this information, I
15 don't anticipate will change substantially
16 from quarter to quarter. When we do have
17 the -- when the pay plan goes into effect
18 and the new minimums, go into effect, there
19 will be some changes there. So the third
20 quarter is when we'll see some increases in
21 these actual numbers where the average
22 salary and the average benefits are
23 concerned. But this will be fairly
24 stagnant, I believe.

25 Travel and training, we projected a

1 little over 11,000. It came in at 9,400.
2 And we had discussed previously what that
3 included, a lot of in state field travel to
4 conduct audits and inspections. And then
5 some -- some folks get to go to the
6 conferences out of state. And then we have
7 our mandatory HAZWOPER training that we have
8 to pay for as well.

9 Operating services, we came in under
10 our projection here. The largest component,
11 as you'll see, is the rent for the regional
12 offices. So Gary's group has some people in
13 all the field offices throughout the state
14 so those team leaders can make it to the
15 site -- the active sites in a -- in a more
16 expedient manner than them all being housed
17 here at the headquarters. So we have their
18 space taken care of.

19 Supplies. Supplies are so -- are very
20 minimal, as you'll see. Just a little
21 portion, \$444. If nobody has any objection,
22 I would like to roll the supplies up into
23 the operating costs because it's really so
24 de minimis. You know, it would take this
25 178,816 to 179,220. So it's very minimal.

1 But it's just a different category in the
2 budget that the Office of Planning and
3 Budget outlines, so that's why it's
4 tracked separately. And it's more
5 significant for other programs and for other
6 agencies but here for the motor fuel trust
7 fund, it's not incredibly significant, so
8 I'll probably include those costs in the
9 operating services going forward unless
10 someone has a concern about that.

11 Professional services. We came a
12 little over on this, but it's still pretty
13 low cost for the work that we needed done
14 under our professional services contracts.
15 We have June Sutherland Consulting who does
16 toxicology and site consultation. She does
17 a lot of work for different programs in the
18 department. This just represents what she's
19 done for the motor fuel trust fund. And
20 then the lab analyst. They're necessary for
21 site work.

22 Then we have our other charges, which
23 is a larger category. These are the
24 contracts or vendors that we use that aren't
25 considered contracts but they're considered

1 procurements. So they do work for us as
2 well. And that includes -- this includes
3 all the final expenses for the year for
4 these different vendors.

5 And then, of course, the attorney
6 general fees, which we had budgeted up to a
7 million and we ended up at 908,446 for the
8 year. So that was -- that was below the
9 expenses and we may see a decrease in those
10 beginning this year. We'll see.

11 So here's the -- here's the mystery of
12 the attorney general charges. It hit it's
13 peak in 2015, almost one and a half million,
14 but it's been steadily around 100,000 the
15 past two years. We did sign the interagency
16 agreement with them for another million
17 dollars for this year, but it remains to be
18 seen how much -- how long the cases will
19 continue and -- and how we decide to settle
20 in going forward.

21 And then as you likely recall, in the
22 past, we paid the attorney general fee, so
23 we paid the 908 -- or the 917,465, for
24 example, last year, we paid monthly to the
25 attorney general's office. In month -- you

1 know, broken down by what work was done each
2 month. It's not in 12 even installments.
3 And it's not at the end of the year. It's
4 as the work is done. And then at the end of
5 the year, we would contact the attorney
6 general's office and say, "okay, the total
7 is 917,465." And they would send us the
8 money back out of the proceeds from the
9 lawsuits.

10 Well, this year, we got a -- and ya'll
11 saw that at the third quarter. I think we
12 got the remaining amount of those settlement
13 proceeds deposited in the motor fuel trust
14 fund. It was just under 9 million dollars.
15 So we didn't have the same transaction this
16 year, because we had taken all the cash that
17 was available at that time. So it's still,
18 you know, turns out to be kinda of a wash or
19 a one to one, and the things get covered by
20 the settlement proceeds, but it didn't
21 happen like it did the previous years
22 because we had already gotten the fund from
23 the attorney general.

24 Interagency transfers. As some --
25 some rent components for the buildings that

1 are state owned and then some security is
2 held on those spaces. And that was right
3 around what we projected for the year as
4 well.

5 Indirect costs. I know we've
6 discussed this some as well. What I've
7 added to this slide is that beginning in
8 fiscal year 2018, our EPA approved overhead
9 rate is 78.24 percent. And after that rate
10 will be 39.12. So for all the
11 administrative expenditure calculations that
12 we do for fiscal year 2018, that's the
13 percentage we'll use. And those -- that
14 percentage is applied to those total salary
15 and related benefits, not the other costs.
16 Just the salary and related benefits for the
17 employees dedicated to the trust fund work.
18 So that -- that is what that rate will be.

19 And then we've discussed how revenues
20 have decreased. We don't know what our
21 award end amount is because the federal
22 government operates on a different fiscal
23 year than we do. But hopefully, it will be
24 a good amount. Maybe it will go up, since
25 it hasn't been going in that direction

1 lately, but I'm not sure. We'll know some
2 time in September probably. So hopefully,
3 we'll have that information at the first
4 quarter's board meeting.

5 And then the ETF revenue. This is a
6 new chart, as well, just to show how the
7 tank fees, tank collections have been. It's
8 -- again, it's right around \$625,000
9 annually. There was a slight decrease this
10 year. That may be related to the flood.
11 But those billed out in March, so I'm not
12 sure. But we do continue to collect those
13 amounts as well, so it's possible -- it --
14 it will continue to increase for the tank
15 fees that were owed for 2017. And again,
16 we're going to be billing those at \$60 this
17 year. When those bills go out in March,
18 they'll be \$60 instead of \$54. And we're
19 available to answer any questions that the
20 tank owners have about that increase, now or
21 later.

22 History of the transfer. So, as we
23 know, this transfer occurs because of that
24 statute citation, 30:2195.4(C)(2). If the
25 fund -- or if the revenues in the

1 environmental trust fund, which is made up
2 of the tank fees and the grant fees, are not
3 enough to cover the program expenditures,
4 the difference can be transferred from the
5 motor fuel trust fund back to the
6 environmental trust fund to make the
7 environmental trust fund whole. And just in
8 general, cost have increased and revenues
9 have decreased. I don't -- we don't have a
10 projection put together for 2018, again, at
11 this point in time, but we will at the first
12 quarter board meeting. There -- you know,
13 it's -- there's reason to believe it would
14 increase because the overhead rate has
15 increased and the salaries are going to
16 increase because of what -- the civil
17 service plan. But we'll have the projection
18 available going forward for ya'll.

19 That's all I have. I'm going to, I
20 guess, go back to my seat unless anybody
21 needs to see another slide again. But ya'll
22 have paper copies, so -- because then I have
23 to talk about financials, as well, and see
24 if there's any questions.

25 MR. HILL:

1 Thank you, Theresa.

2 MS. DELAFOSSE:

3 And then, in your packet at tab 2 --
4 tab 3, the purple tab, you have the -- the
5 financial statement. And this is -- we have
6 fiscal year 2016 year ending compared to
7 fiscal year 2017 year ending. You'll see on
8 the bottom line, the obligated balance. The
9 unobligated balance has increased over 13
10 million dollars. Largely attributable to
11 the attorney general transfer, which was
12 8,667,000. If you net that out, it makes an
13 increase of 9.2 million in the in close and
14 out close category.

15 Not much else -- so I don't know if I
16 need to point anything else out on there.

17 And then the next page is the -- the
18 transfer from ETA to the motor fuel fund.
19 Because -- and it's complicated, but --
20 because the legislative auditor's office
21 requested that these financial statements be
22 prepared on a cash basis, but -- so that
23 means that the transfer shows up in the next
24 year, because we don't -- we don't see that
25 transfer until July, and so for a cash

1 basis, the year ends on June 30th. So
2 anything that happens in July is a new year.
3 Regardless of whether it's meant to happen
4 the year before. So that's why there's a
5 lag there. So as you see, like the right-
6 hand column on your second sheet is 2018 and
7 the bottom line is actually what the
8 transfer was for 2017. So it was just under
9 5.6 million. And then I've presented the
10 net number, net of the attorney general
11 charges.

12 I don't know if ya'll have any
13 questions about the presentation or about
14 the financial statement?

15 MR. MARCELLO:

16 I do.

17 MS. DELAFOSSE:

18 Okay.

19 MR. MARCELLO:

20 And I -- I'm not being facetious
21 or disrespectful by all means, but I have to
22 ask this question. Is anybody in this room
23 listed on this list called employees coded
24 to MFUSTFF?

25 MS. DELAFOSSE:

1 Yes.

2 MR. MARCELLO:

3 How many people? I mean -- I mean,
4 you got -- I -- I'm looking at scientist and
5 project coordinators and so forth and so on.
6 I mean, shouldn't like -- let's say the
7 audit portion of it, shouldn't that -- if
8 he's auditing --

9 MS. DELAFOSSE:

10 Well, the audit portion is covered as
11 overhead rate. That's why we apply that --
12 that 35 percent, it was for this year,
13 overhead rate. That's for Cy --

14 MR. MARCELLO:

15 That's --

16 MS. DELAFOSSE:

17 and for me --

18 MR. MARCELLO:

19 Got you.

20 MS. DELAFOSSE:

21 -- and for Perry.

22 MR. MARCELLO:

23 And that was my next question.

24 MS. DELAFOSSE:

25 Perry works --

1 MR. MARCELLO:

2 He does a lot of stuff -- I just --

3 MS. DELAFOSSE:

4 But he works on other stuff too,
5 believe it or not.

6 MR. MARCELLO:

7 Right.

8 MS. DELAFOSSE:

9 His favorite is motor fuels, I know.
10 And I work on other stuff too. And Cy, as
11 well. So that's -- we are -- we're included
12 in the overhead amounts and not the direct
13 charge.

14 MR. MARCELLO:

15 Okay. That's all I have.

16 MS. DELAFOSSE:

17 Okay. Anything else?

18 (No response.)

19 MS. DELAFOSSE:

20 And it -- ya'll notice -- I mentioned
21 that I added the slide on the bulk
22 distribution fee history. My thought was
23 that -- so it didn't become redundant and I
24 wasn't, you know, reading similar
25 information from time to time -- and I know

1 three months is a long time, so it's good to
2 present the same information again to a
3 certain extent, of course. But I want to
4 include some additional information points
5 in there like that. I was thinking maybe I
6 could do something on the claims for
7 reimbursement, kinda of a history and maybe
8 a breakdown on some those information
9 points. I added the interest information so
10 you could see that that -- those increase
11 revenues were available. Just to include
12 different points of information but not --
13 not be redundant, to make sure everybody has
14 a good understanding of all the different
15 components and moving pieces.

16 That's all I have.

17 MR. MARCELLO:

18 Let me ask you one more question.

19 MS. DELAFOSSE:

20 Okay.

21 MR. MARCELLO:

22 Under the -- the purple tab you were
23 telling us about, which is the -- the -- the
24 statement of cash basis assets and fund
25 balances. Under disbursements, I'm noticing

1 that it was like a five thousand -- five
2 million dollar decrease for claims.

3 MS. DELAFOSSE:

4 Yes.

5 MR. MARCELLO:

6 Is that --

7 MS. DELAFOSSE:

8 So --

9 MR. MARCELLO:

10 Would you kindly -- if -- is that
11 possible to trigger that code, that -- that
12 -- that account number for next meeting and
13 show us in the last five years --

14 MS. DELAFOSSE:

15 Yes. I can do --

16 MR. MARCELLO:

17 -- those numbers? Would --

18 MS. DELAFOSSE:

19 I can definitely do a better analogy
20 for that. And I think that would be
21 helpful. And that was the next one on my
22 list.

23 But there are -- as I discussed with
24 the -- so on page two where I showed you
25 that the number at the bottom in 2018 was

1 actually 2017, that's part of what's going
2 on with the disbursement too. So the -- the
3 applications are due June 30th. The
4 applications are due June 30th for the
5 fourth quarter. Jeff's group doesn't
6 process them on June 30th. They get
7 processed in July. So those get processed
8 later. For this financial statement, those
9 disbursements are in 2018.

10 MR. MARCELLO:

11 Right. Okay.

12 MS. DELAFOSSE:

13 So they're not on here. So I asked
14 Jeff -- when I looked at this number, I
15 said, I anticipate there will be questions
16 about this because that's a large decrease.
17 So Jeff got me information on his end and it
18 kinda evened the years out. So I will do a
19 -- a fuller --

20 MR. MARCELLO:

21 Okay.

22 MS. DELAFOSSE:

23 -- analysis of that for the next
24 meeting.

25 MR. MARCELLO:

1 All right. Well, thank you.

2 MR. DELAFOSSE:

3 Okay.

4 MR. BAKER:

5 And if you'll look under tab five, the
6 second page on tab five, if you'll look,
7 there's a -- one entitled reported
8 cumulative activities on the motor fuel
9 trust fund. You'll see our disbursements
10 under account amount recommended payment. I
11 guess the one -- about sixth column over.
12 You'll see that going back for several
13 years. That's our disbursements.

14 MS. DELAFOSSE:

15 Okay.

16 MR. MARCELLO:

17 There it is.

18 MR. BURNHAM:

19 Which column was it?

20 MR. BAKER:

21 It's called -- it's titled amount
22 recommended payment.

23 MR. BURNHAM:

24 Okay.

25 MS. DELAFOSSE:

1 It's the third column under the
2 applications process tab.

3 MR. BAKER:

4 So that kinda gives you an idea
5 historically what we're looking at.

6 MS. DELAFOSSE:

7 So, see, for '17, Jeff's numbers had
8 11.3 million. So a lot of stuff happened in
9 the beginning of July that wasn't caught on
10 the cash basis financial statement.

11 MR. BAKER:

12 Those are all applications we actually
13 processed prior to June 30th, but however,
14 payments didn't get done until -- until into
15 July.

16 MR. HILL:

17 Anymore questions for Ms. Theresa?

18 (No response.)

19 MR. HILL:

20 Thank you, Theresa.

21 MS. DELAFOSSE:

22 Thank you.

23 MR. HILL:

24 If so, we'll move on to number four,
25 auditor's status report. Cy.

1 MR. MORIN:

2 Cy Morin. So tab four will be the
3 report for the motor fuel audit. The first
4 page of this report shows 29 open motor fuel
5 audit cases as of August 4th.

6 Right now, we have one case that has
7 resulted in a credit due to the calculation.
8 As of August 4th, we were waiting this
9 credit deduction, I did find since find out
10 that this has been taken care of.

11 Two cases are awaiting posting of
12 payments received, totally \$6,941.67. Once
13 that's completed, these will come off the
14 list.

15 Three cases are in review and six
16 cases are awaiting -- 16 cases are awaiting
17 review. Pending final review, only one of
18 these cases has a potential credit of
19 \$579.61. The other 18 are potentially clean
20 audits, with no assessment.

21 Five cases are still in progress, with
22 results to be determined. One case is in
23 the report writing phase. This one is a
24 potentially clean audit also.

25 One new case has been planned and will

1 start on August 22nd. That's the last case
2 on the list.

3 Are there any questions about this
4 page? Anything on this page?
5 (No response.)

6 MR. MORIN:

7 Okay. Flip to the second page. We
8 still have four cases that are being pursued
9 legally. Not much has changed with a couple
10 exceptions. The first case, as I said last
11 meeting, was awarded a judgment in the
12 amount of \$51,907.98. This case is
13 currently being prepared to be sent to ODR
14 and it will be sent -- it should be sent
15 within the next 90 to 120 days, I'm told.

16 The defendant in the second case
17 continues to make payment. The last payment
18 of \$250 was remitted on July 28th. If
19 payments cease in this case, it will also be
20 forwarded to ODR.

21 The status remains the same on the
22 third case. It was referred back in October
23 of 2015 to ODR. And as of August 3rd, we
24 have not received any payments through that
25 process.

1 There's been -- there's also been no
2 change in the fourth case, and it's also
3 being prepared to be sent to ODR. It should
4 be sent within the next 90 to 120 days.

5 The four legal cases, as you can see,
6 represent a total outstanding amount of
7 \$118,722.30.

8 And I just wanted to note that during
9 fiscal year 2017, audit services through
10 this process collected just over \$10,000 in
11 delinquent motor fuel delay fees and late
12 penalties. Also, during fiscal year '17, we
13 were tasked with performing reviews when
14 motor fuel distributors request refunds. We
15 did two set reviews fiscal year '17 and it
16 resulted in approximately \$6,000 total in
17 refunds.

18 And that's it. Any questions?

19 (No response.)

20 MR. HILL:

21 If no one has any questions, we'll
22 move on. Thank you, Cy.

23 MR. MORIN:

24 You're welcome.

25 MR. HILL:

1 Number five, trust fund status report.
2 Jeff.

3 MR. BAKER:

4 Good afternoon. If you'll turn to tab
5 five in your packets. These are the figures
6 for the fourth quarter of fiscal year 2017.

7 During the fourth quarter of this
8 fiscal year, the trust fund received 258
9 applications, totaling approximately 2.8
10 million dollars. As of the end of June
11 2017, the trust fund had 90 pending
12 applications to process, which had requested
13 amounts of approximately 1.3 million
14 dollars. 286 applications were processed
15 for payment during the fiscal quarter,
16 totaling approximately 3.8 million dollars.
17 And 31 applications were returned with
18 deficiencies.

19 If you'll flip to the handout entitled
20 monthly motor fuel trust fund obligation
21 determination. It's the third page under
22 that tab.

23 This worksheet list the various
24 component determinations for the potential
25 obligation against the trust fund as of the

1 end of June 2017. For sites in the
2 corrective action phase, the outstanding
3 liability for corrective action plan budget
4 and estimated costs to reach closure at the
5 end of this quarter was approximately 26
6 million dollars. This total includes the
7 CAP budget remaining amounts and the RAC
8 estimated cost to close amounts.

9 If you'll -- and if you'll bear with
10 me for a second. If you'll flip to the
11 first legal page in this tab, entitled --
12 no, that's actually the second legal
13 section. It's titled corrective action plan
14 budgeted amounts for active sites. You'll
15 see a list of every site that we currently
16 have in the corrective action phase. And
17 you'll be able to tell from there the total
18 expenditures. That's the third column over.
19 Different categories of cost. We have our
20 budgeted numbers, our CAP budgets, our ICAPs
21 and our total pending cost as well.

22 We haven't provided that in the past,
23 but we thought that might be beneficial
24 information to ya'll. So if it is, let me
25 know and we'll continue to include that.

1 Going back to our obligation
2 determination sheet, the fund obligation
3 recognized for sites without ROG approved
4 CAP budgets is approximately 30.4 million
5 dollars. This is determined using a three
6 year average site closure cost and applying
7 these cost to the active trust fund sites
8 without current CAP budgets.

9 Again, if you'll bear with me, we will
10 go back to the first legal page, titled non-
11 CAP trust fund obligation estimates. This
12 is the sites that are included in the non-
13 CAP category. It's approximately 120 to
14 130 of those sites.

15 And again, you can see those cost
16 associated with the sites as of the end of
17 June 2017.

18 Going back to the fund obligation
19 determination page, you'll see the fund
20 obligation recognized 26 sites that have
21 been determined to be trust fund eligible,
22 however, have not submitted the
23 reimbursement application. This total is
24 approximately 8.4 million dollars. This is
25 also determined using the three year average

1 site closure cost and applying these cost to
2 the sites that have requested eligibility
3 and have yet to submit a request for
4 reimbursement.

5 The five year budgeted fund obligation
6 related to the motor fuel trust fund to
7 environmental trust fund transfers is
8 approximately 18.6 million dollars. This
9 estimate uses the three year average dollars
10 transferred from the motor fuel trust fund
11 to the environmental trust fund and
12 multiplies that average by five years.
13 That's the same numbers that Theresa showed
14 you on the board a little earlier. We
15 averaged the last three years and utilized
16 those numbers.

17 That number will be changing in the
18 next quarter when we do this on a fiscal
19 year basis. So that -- that will be
20 recalculated the next -- next quarter.

21 Thus, the total estimated obligated
22 amount is approximately 83.4 million dollars
23 which represents an \$800,000 increase over
24 the last quarter's estimated amounts.

25 You'll also notice the sheet towards

1 the back of your packets -- let's see.
2 Well, actually it's not -- the one before
3 the legal sheet. It's the -- it's titled
4 trust fund grant and no further action
5 status by the UST division. This list the
6 19 sites that were trust fund active sites
7 that were declared NFA'd during this fiscal
8 year. And it gives you the date that we
9 received the first application, the number
10 of applications we received, the last
11 application received, the NFA date and the
12 total dollar. The one thing I'll caution
13 ya'll on is, these sites don't immediately
14 come off of our active list, because just
15 because they receive an NFA status,
16 sometimes the RACs have a couple quarters of
17 cost still hanging out there that we have to
18 kinda wait for them to get -- get through
19 the cleanup of the site before we take them
20 off our list.

21 And the last page in this, in tab
22 five, is the incidents determined to be
23 eligible for the motor fuel trust fund.
24 There were approximately 30 sites determined
25 to be eligible during this fiscal year,

1 representing 36 active incidents.

2 Some other points of interest, the
3 revised version of the trust fund cost
4 control guidance document has been completed
5 and posted on the department's web page.
6 This final version of the guidance document
7 became effective as of July 1st, 2017.

8 For the board members information, all
9 the minutes and topics discussed in the
10 stakeholder meetings have been documented
11 and are posted on our EDMS page for future
12 reference. So all of our stakeholder
13 minutes and notes are out on our EDMS tool
14 for reference now online.

15 Another point of interest is the -- as
16 per the board's recommendation, the
17 secretary did reduce the deductible for the
18 in-compliance incidents to be reduced to
19 zero dollars. That became effective as of
20 July 1st, 2017.

21 That ends my comments. If ya'll have
22 any questions?

23 MR. HILL:

24 Does anybody have any questions
25 relating to Jeff's report?

1 (No response.)

2 MR. HILL:

3 If not, thank you, Jeff.

4 I just asked that question about when
5 the zero compliance went into effect at
6 lunch. So, thank you.

7 MR. MARCELLO:

8 And we would still like to see this
9 information. You said it -- it is
10 fantastic.

11 MR. BAKER:

12 Okay. No problem.

13 MR. MARCELLO:

14 It's good stuff.

15 MR. HILL:

16 Third party claim status. Mr. Perry.

17 MR. THERIOT:

18 I am happy to report, we have not
19 received any new, and -- nor, have we
20 settled any of the old. But -- so we are
21 still in status quo since the last board
22 meeting.

23 MR. HILL:

24 Okay. Thank you. Any questions?

25 (No response.)

1 MR. HILL:

2 Number seven, the overview
3 presentation of the current trust fund
4 eligibility process. Jason Efferson.

5 MR. EFFERSON:

6 All right. You guys asked to see the
7 -- kinda the decision process that we go
8 through for eligibilities.

9 MR. THERIOT:

10 Before we move on, there are some --
11 we receive periodic developments in the
12 reimbursement lawsuits. Theresa pointed out
13 that I might -- it's not on here, but I'll
14 go ahead and report on it. We have a
15 telephone conference with our in-house
16 attorneys next week. So -- and there are
17 still currently quite a -- I think it's four
18 --

19 MS. DELAFOSSE:

20 Four.

21 MR. THERIOT:

22 -- on the list that are still being
23 worked on for reimbursement suits.

24 MS. DELAFOSSE:

25 And I think -- yes, some of them are

1 actively in discovery.

2 MR. THERIOT:

3 Yes. They're all -- they're all
4 actively in discovery.

5 MS. DELAFOSSE:

6 But some closer to settlement than
7 others.

8 MR. THERIOT:

9 Yes. Without going into executive
10 session, that's probably all we can really
11 say about it is that, they are ongoing and
12 our outside attorneys from here and our
13 consultant attorneys that have been --
14 that's in Denver are diligently working on
15 it. And we have a telephone status on the
16 discovery set for Tuesday.

17 MR. MARCELLO:

18 With that said, then -- then if I
19 assess this right, we have outside
20 attorneys, we have consulting attorneys and
21 we have the AG's office.

22 MR. THERIOT:

23 The AG's office is the coordinating
24 group that does it. We in-house -- we have
25 counsel in-state that -- because we are in

1 the state court here. The Denver attorneys
2 have extensive experience having litigated
3 these in quite a few states.

4 MR. MARCELLO:

5 Right.

6 MR. THERIOT:

7 And so we don't have to reinvent the
8 wheel. It would actually cost us more if we
9 had to do it without the Denver assistance.
10 We do monitor the cost.

11 MR. MARCELLO:

12 Yes.

13 MR. THERIOT:

14 And -- and they've been doing --
15 they've recovered well in excess of anything
16 they've been paid. So -- but it is because
17 the Denver attorneys have experience with
18 the same companies that we are currently in
19 litigation with. So that when they do
20 discovery, just by way of explanation, they
21 go in already having had their lawsuits
22 answered in other states, which helps us not
23 have to do it twice.

24 MR. MARCELLO:

25 Right.

1 MS. DELAFOSSE:

2 And they know what to ask.

3 MR. THERIOT:

4 In Denver, I'm in pretty regular
5 communication with the gentleman who was the
6 trust fund up there. So he keeps me posted
7 on that too, as well. I've got my name in
8 the hat should -- if anybody happens to know
9 -- run into him. But he runs the -- they --
10 they don't call it their -- they don't call
11 it the motor fuel trust fund, but it -- it
12 is the -- roughly the equivalent of what we
13 do here.

14 MR. HILL:

15 Okay. Jason, you ready?

16 MR. EFFERSON:

17 Yes, sir.

18 MR. HILL:

19 Okay.

20 MR. EFFERSON:

21 We talked the last -- the last meeting
22 about some of the compliance and how we look
23 at compliance and non-eligibility process
24 and how that's sort different than the way
25 that the UST compliance inspects go. But

1 we're just going to go over the eligibility
2 process quickly.

3 The trust fund was created in 1988 and
4 -- as a provider of financial assurance for
5 the tank owners to meet the requirements of
6 the financial responsibility requirements.

7 And you see, you know, a couple of
8 years ago, we moved up to 1.5 million
9 dollars a year per occurrence for eligible
10 tanks.

11 This is kind of the typical process,
12 you know, you'll have a release, you'll have
13 a fuel or line release. That -- that
14 release gets reported to our UST Department
15 or surveillance and they go out. And once
16 they determine that there is contamination
17 and -- and that further assessment is
18 required, then the -- that's kinda when the
19 trust fund starts kicking in and we start
20 taking over for the reimbursements and --
21 and that sort of thing.

22 So the responsible party would request
23 an eligibility determination by submitting
24 an LDEQ determination application. That's
25 the first that we see of it. And then the

1 trust fund staff will review these
2 applications and determine the deductible
3 amount based on the compliance. And you see
4 they're in compliance -- well, this is --
5 this is not accurate as of July 1st. But
6 the compliance would -- is based on 100
7 percent compliance at the time of the
8 release. So that deductible would go to
9 zero for compliance and it would remain
10 10,000 at any non-compliance.

11 Here is our definition of an eligible
12 participant. And this is where we get the
13 basis of most of what we look at for our
14 eligible participants, that's our tank
15 owners. And one of the first things we look
16 at is, were the tanks registered prior to
17 release, you know, because all tanks are
18 required by regulation to be registered so
19 we want to make sure that they were done so
20 before we have an identified release. We
21 want to make sure that the annual
22 registration fees have been paid. And we
23 want to make sure that a release has
24 occurred, is this -- is this a release that
25 we're looking at that's continuing or -- or

1 have we determined a release occurred, have
2 DEQ requested a further assessment for this
3 release? If we're not really asking for
4 anything, you know, we don't seeing this
5 going no further, we really don't -- it
6 really doesn't get included in the trust
7 fund. And some of these incidences don't go
8 past that stage, so --

9 You know, and so the next part is the
10 compliance review and the deductible amount.
11 And we also look at the financial
12 responsibility mechanisms entered into your
13 form for your registration.

14 Another thing that effects the
15 deductible is the date of the release. We
16 don't see this quite as often anymore
17 because of the deductible -- I'll get into
18 that later -- and whether that tank is still
19 operating, when you were last in operation.

20 This is -- this is some more
21 historical data that you can see. In
22 between the years, you know, the deductible
23 amounts have changed. But if you see here -
24 - and I'll show in a later slide -- releases
25 between the dates of 1995 and basically

1 through 2001, the deductible was set at
2 \$5,000. And we moved into a compliance
3 issue, we started looking into compliance
4 after -- after this time. And so that -- so
5 that's the date. So then, any -- any
6 release that was after 2002, we were going
7 to review it for compliance to determine
8 whether -- what the deductible was, whether
9 it was going to be 5,000 or 10,000, whatever
10 the secretary recommended.

11 And as far as compliance, it needs to
12 be 100 percent in compliance. And we get
13 those -- you know, our eligibility
14 application has the documents that we
15 require to make that decision. Non-
16 compliance, you see at the bottom here, is -
17 - is a deductible of \$10,000, at this point.

18 These are some of the things that we
19 gather our compliance review from. And it's
20 -- it comes from -- a lot of it comes from
21 compliance inspection, but it's -- I won't
22 go off, but it's -- it's here.

23 But we gather this information from
24 the statutes, and I actually have a slide
25 for that. It's probably out of order, but -

1 - this -- this slide here shows that -- at
2 the point between '95 and 2002, the
3 deductible was \$5,000. And then the next
4 one is, any time after that, which is after
5 2002, the secretary determines the new
6 deductible amounts and that's what you guys
7 -- based on your recommendations. However,
8 the compliance deductible, the -- the
9 compliance deductible is -- this -- this
10 actually sets the compliance. This is where
11 we get our criteria for the compliance
12 reviews. But at the bottom, you see here,
13 the financial responsibility amount is
14 \$10,000. And I only mention that because,
15 later on -- later on in the statutes, two
16 sections down, we have here at the last line
17 you see, it says that, "the deductible for
18 non-compliance shall be no less than the
19 amounts currently established by law." So
20 that -- that amount that was established by
21 a law is that \$10,000 in this section here.
22 So that's -- that's why we're stuck at the
23 \$10,000 non-compliance and we can go to a
24 zero deductible for full compliance.

25 I just added this because we've been

1 seeing this a lot more. In our -- in our
2 applications, the responsible party signs
3 the owner affidavit, the owner
4 responsibility certification affidavit and
5 our documentation provided. In 2006, we
6 started reviewing compliance as -- as part
7 of the deductible, you know, so you'd have
8 your ten or five or zero and \$10,000
9 deductibles. And these -- these documents
10 right here, and more importantly the -- the
11 part six, I just want to point out, it
12 points out that it's the owner's
13 understanding that they've given us all the
14 documents that we need to make these
15 eligibility determinations or it will result
16 in the \$10,000 deductible. And we see that,
17 because what we use to do, when we get the -
18 - the compliance reviews is, we would give
19 it the \$10,000 deductible because it wasn't
20 -- the sites weren't in 100 percent
21 compliance and then the owners or
22 responsible parties would come up with that
23 information and we'd have to review it again
24 and maybe again, keep asking for
25 information. So we put this in, in 2006 so

1 that -- to say that this is all the
2 information you have and make your
3 determination based on this. Now, we will
4 review the compliance deductibles if it's --
5 if it's our error, you know, if -- if we
6 miss -- if we misunderstood the information
7 or -- or made the correct -- incorrect
8 decision, we'll go ahead and review that
9 again. But typically, we don't want to have
10 to go back and look at these again and
11 again. That's why we put these in there.

12 So this is from another presentation,
13 but we get questions all the time
14 about, you know, is my site eligible, or
15 will it be eligible? We really don't know
16 that determination until we actually get the
17 application and look over it. So we can't
18 really tell. On the same note, we don't --
19 we -- we don't know how much the deductible
20 is going to be. Sometimes there's one
21 release. If there's a release of gasoline
22 and diesel, that deductible is going to be
23 for both releases. So it could be anywhere
24 from 10 to 30 thousand dollars, you know,
25 depending on the amount of releases and the

1 constituents that are released.

2 That's all I have right now. If you
3 have any questions?

4 MR. THERIOT:

5 I have one comment to add to the
6 presentation because it's timing. As of
7 this year, the provision that was added in
8 2016 as of August 1st, you have -- an owner
9 has two years to begin the investigation and
10 get the request for reimbursement to us.
11 After two years, the site will no longer be
12 eligible, if you haven't instituted an
13 investigation. And that operates mainly
14 upon the RACs and the owners to get those
15 investigations into us. The word we need to
16 make sure everybody gets out there is that
17 when you find a release and it's reported to
18 the department, the clock will begin
19 ticking. This was placed in because we had
20 numerous sites where it had been reported to
21 us and three years, four years later, they
22 haven't had an investigation yet. And the
23 whole time that's happening, that spill is
24 increasing, that plume is broke and it will
25 increase the cost of the remediation. So --

1 it will likely increase the cost of the
2 remediation.

3 So we felt it necessary to put people
4 on notice. They ought to be able to get
5 their investigations done, at least begun,
6 within two years. And so there is a two
7 year clock on release dates. Just remind
8 everybody out there that that's -- that's
9 now, as of August 1st, the law.

10 MR. MARCELLO:

11 But for some unforeseen circumstance,
12 if a RAC is working with an owner and is
13 working on the cause of the release and it's
14 not -- the final cause -- the investigation
15 is not complete within two years, the clock
16 doesn't stop?

17 MR. THERIOT:

18 No.

19 MR. MARCELLO:

20 I mean, as long as it's going --

21 MR. THERIOT:

22 It's to -- it's to begin --

23 MR. BAKER:

24 The way -- the way it works is --

25 MR. MARCELLO:

1 Just ask -- okay.

2 MR. BAKER:

3 -- the clocks starts as soon as the
4 owner gets the letter from the department
5 saying you need to be doing an assessment.

6 MR. MARCELLO:

7 Got you.

8 MR. BAKER:

9 Okay. That's when it starts.

10 MR. HILL:

11 The problem -- the problem lies on the
12 tank owner not doing a timeline maybe --

13 MR. THERIOT:

14 We're not -- we're not going to point
15 fingers. I don't think we should.

16 MR. HALL:

17 Right. No.

18 MR. THERIOT:

19 But it -- it just -- people need to be
20 aware of the fact that once the letter goes
21 out from us, they will --

22 MR. BAKER:

23 The two year mark starts. Now, the
24 way the letter reads is that it's -- the --
25 the clock can stop, or when -- when we

1 consider it to be initiated, and we haven't
2 come up with a term. What do we want to
3 define as initiation? That is a work plan
4 for investigation has been submitted to the
5 department and approved by the department.
6 Work may not have started at the site yet,
7 but the department has got it, has got it 30
8 days in advance before the deadline --

9 MR. MARCELLO:

10 Right.

11 MR. BAKER:

12 -- so they have time to review and
13 they've now approved it. At that point, we
14 consider the work initiated.

15 MR. MARCELLO:

16 Got you.

17 MR. ST. ROMAIN:

18 It's two years from the point that --

19 MR. BAKER:

20 When you get that first letter.

21 MR. ST. ROMAIN:

22 -- you send the letter. Not the point
23 the tanks --

24 MR. BAKER:

25 Right.

1 MR. THERIOT:

2 Not -- not the actual cause --

3 MR. ST. ROMAIN:

4 That -- that could be months.

5 MR. BAKER:

6 When the letter comes from the
7 department telling you, you need to assess
8 the site.

9 MR. ST. ROMAIN:

10 And is that two year period
11 retroactive or any sites that got letters
12 after August 1st?

13 MR. THERIOT:

14 I think it applies to any site with a
15 release after August 1st.

16 MR. ST. ROMAIN:

17 Okay. So -- so it's still open season
18 on ones that are three, four, five years
19 old.

20 MR. THERIOT:

21 Yes. But the clock will begin
22 closing.

23 MR. ST. ROMAIN:

24 Got you. Good.

25 MR. BAKER:

1 Now, ya'll recognize, again, as of
2 July 1st, the in-compliance deductible is
3 now zero. Okay. The out of compliance
4 deductible is still \$10,000. Jason is going
5 -- goes through and does his reviews. So an
6 application still has to be submitted, just
7 like before, so we -- he can do his
8 assessment to determine whether it is or out
9 of compliance. Okay?

10 The other thing he's looking at -- and
11 this really relates to these third party
12 lawsuits. He's been doing a much better job
13 of going through and checking out what box
14 has been checked on the registrations. And
15 what I would like ya'll to take back to your
16 -- to your board members is, we're finding a
17 lot of these sites, or a lot of these
18 owners, are very confused as to what they're
19 checking off. It's asking about insurance
20 and they don't -- they don't quite get it
21 apparently that when they're checking off,
22 they're stating they want to use trust fund
23 as their funding mechanism. In a lot of
24 cases, they're checking off self insurance,
25 they checking off --

1 MR. MARCELLO:

2 Right.

3 MR. BAKER:

4 -- other things. And in reality, they
5 don't really -- we don't believe they mean
6 it. We think they may be talking about the
7 deductible amount that covers the deductible
8 or whatever.

9 MR. MARCELLO:

10 Right.

11 MR. BAKER:

12 But -- so we're sending them letters
13 saying, hey are you -- is this what you
14 meant to check off? However, if they did it
15 right the first time, it would make our life
16 a whole lot simpler. So I guess what I
17 would ask for ya'll to go back to your board
18 is, is check with your board member and say,
19 guys when ya'll are doing -- filling out
20 those registration forms, if you intend on
21 the trust fund to be your funding mechanism,
22 that's what you need to check off. And Sam
23 is revamping the form to where it may be a
24 little bit more clear.

25 MR. MARCELLO:

1 Well, that's what I was going to say,
2 since I've been on the board, you've brought
3 that up every meeting, every meeting, but
4 then again, it seems to reason, if you're
5 getting an application, wouldn't it be for
6 the trust fund?

7 MR. THERIOT:

8 Well, it is except for you consider,
9 sometimes we get applications from people
10 who are not covered by the trust fund. For
11 instance, Cosco's, they don't participate.

12 MR. MARCELLO:

13 No. I get it. But I mean, if they're
14 applying --

15 MR. THERIOT:

16 Yes, but --

17 MR. MARCELLO:

18 -- then naturally, they're applying
19 for the trust fund.

20 MR. THERIOT:

21 Well, we've got them from Pilot where
22 they --

23 MS. DELAFOSSE:

24 But they still have to send us that
25 information, even if they're not --

1 MR. THERIOT:

2 Yes. And the -- the statutes doesn't
3 allow --

4 MR. MARCELLO:

5 Oh, right. Okay.

6 MR. BAKER:

7 We're talking about the registration
8 on tanks. Let's not get the application for
9 eligibility and the registration of the
10 tanks confused.

11 MR. MARCELLO:

12 Right.

13 MR. BAKER:

14 What we're talking about is, when they
15 register those tanks with the department --

16 MR. MARCELLO:

17 Got you.

18 MR. BAKER:

19 -- there's -- there's a box to check
20 off, what are you going to use for your
21 funding mechanism, as per our regulations?
22 They tend -- the -- sometimes they get it
23 right, but sometimes they check the box that
24 says they're going to request some other
25 funding mechanism. But then when they have

1 a release, they come to us for eligibility
2 and say, hey we --

3 MR. MARCELLO:

4 They come to you. Right. And you're
5 looking at a piece of paper that says --

6 MR. BAKER:

7 And we're like, oh, no, that's not
8 what you checked.

9 MR. MARCELLO:

10 You said you had your own insurance or
11 whatever.

12 MR. THERIOT:

13 Some of them --

14 MR. MARCELLO:

15 Or, you get Perry's bank account. So
16 I --

17 MR. THERIOT:

18 Why they never do this, I don't know,
19 but Cosco does not participate. They have
20 their own insurance. They check off, own
21 insurance.

22 MR. BAKER:

23 We're just asking that ya'll go back
24 to your board members and --

25 MR. HILL:

1 Do you think they're confused or --

2 MR. THERIOT:

3 Well, we have found that most of the
4 incorrect ones we have gotten, not all, but
5 most, are national companies that operate in
6 lots of states. And so, when they get
7 ours, some states have insurance and some
8 states have funds, and that's where the
9 problem comes in. And for instance, Pilots
10 of the world, they -- they have umbrella
11 policies that kick in if ours don't cover.

12 MR. HILL:

13 Okay.

14 MR. THERIOT:

15 So they check off insurance because
16 they do have insurance, but it's an umbrella
17 policy that kicks in when ours is used up.

18 MR. HILL:

19 Okay.

20 MR. THERIOT:

21 And so technically under the statute,
22 no one is covered by the fund if they
23 checked on the wrong box, because if there's
24 other insurance available, we're not suppose
25 to cover it.

1 MR. HILL:

2 Okay.

3 MR. THERIOT:

4 And so, we have to call them up, write
5 them a letter, that kind of thing, and --
6 and make sure that that's what they really
7 meant to put.

8 MR. HILL:

9 So you pay only if it goes -- you pay
10 only if their insurance is capped out?

11 MR. THERIOT:

12 No, no. That -- no, like Pilot
13 carries an umbrella that -- they use ours
14 for the first --

15 MR. HILL:

16 First, okay. Yours is first.

17 MR. THERIOT:

18 But some of those truck stops, they
19 have major releases, they pump thousands of
20 gallons a day. And they can have more than
21 1.5 million at their site, so they carry an
22 umbrella policy that once we -- well, the
23 deductible for them is 1.5 million. When
24 they finish ours, then they go to their
25 insurance.

1 MR. HILL:

2 I see. I follow you.

3 Thank you, Jason.

4 Do -- let's see, number eight. Other
5 business, discuss LDEQ proposal to create a
6 workgroup to research and recommend
7 potential legislative changes.

8 MS. DELAFOSSE:

9 So I'll -- I'll discuss this and then
10 we can have a discussion with everyone.

11 We've had a couple of things come up
12 in, you know, all year, I guess, but, you
13 know, legislative session starts next spring
14 and this board only meets four times a year
15 and maybe not the best avenue to get, you
16 know, legislative changes down on paper and
17 -- and charge Perry and our legal folks with
18 writing up a bill for us. So in order to
19 facilitate that, it was Karyn's suggestion
20 that we create a workgroup to research and
21 recommend potential legislative changes.

22 So I know for example, Sam had done
23 the presentation previously on the
24 deductible. We did recommend a zero dollar
25 -- the board recommended a zero dollar

1 compliance deductible, but the issue still
2 remains for some of the sites with the non-
3 compliance deductible, just as an example.
4 Another thing that Jeff mentioned at the
5 last board meeting was the interest, and
6 then I -- I touched on it as well in my
7 presentation -- was the interest revenue.
8 The interest revenue is earmarked for the
9 abandoned tank program. It's technically
10 not available for the regular site cleanup.
11 However, it's been historically included in
12 the starting and ending balance of the -- of
13 the fund. So we need to discuss an approach
14 on that as well. And that may require some
15 legislation, but it may not. So just a
16 couple of things like that. What were the
17 other ones we had talked about, Jeff?
18 And then the sliding scale for the fee.

19 MR. BAKER:

20 Right.

21 MS. DELAFOSSE:

22 .008 right now, but I did some
23 research on -- you know, on my sheet how I
24 have that inflows and outflows line which
25 basically shows the changes and net position

1 for the fund in the year. And since fiscal
2 year '11, the -- it has increased at least
3 5 million dollars a year. So we have taken
4 in at least 5 million dollars more than
5 we've spent. And that includes all the
6 expenditures, the administrative, the site
7 work. And then we have the -- we have the
8 new cap at 40 million, but we're going to
9 get -- and for reasons that we've discussed
10 and can discuss again, it -- you know,
11 stopping and starting may prove incredibly
12 difficult for both the department and for
13 the folks who are remitting the fee. So we
14 may want to look into options there and have
15 a -- have the board recommend annually the
16 fee for the upcoming year. So that would
17 take place at -- you know, an earlier board
18 meeting in the year. Have it recommended
19 and approved by the secretary and then make
20 a new recommendation every year so we -- you
21 know, the fund is not continuing to grow and
22 grow and with no end in sight until we hit
23 the 40.

24 But I just wanted to put those things
25 on the table and get everybody to put on --

1 on forming a workgroup. It -- you know,
2 session is soon. It would probably be --
3 need to be a workgroup that was available to
4 meet at least by phone fairly regularly, in
5 my opinion. I don't know if Perry -- what
6 Perry's thoughts are.

7 MR. THERIOT:

8 Well, I -- I -- we have our workgroup
9 that's going to be working on -- we had the
10 meeting today. I don't know if it would be
11 the same people that would want to, but we
12 could hold that in conjunction if we wanted
13 to, with the same group members if the board
14 wants the same people there, working on the
15 legislation. We might not want any
16 legislation, we might want it. But we
17 should at least be preparing it ahead of
18 time so that everybody gets a chance to look
19 at it and it gets to be analyzed. And if
20 we're all on board, we don't have as much
21 trouble introducing it.

22 So I would recommend that we kinda
23 keep that in mind and maybe put it on our
24 workgroup that we already have, if
25 necessary. And you guys are free to sub

1 people in and out. I think some of ya'll
2 serve on Sam's group, workgroup, as well.
3 Don't they, Sam?

4 MR. BROUSSARD:

5 Yes.

6 MR. THERIOT:

7 So Sam's group is wrapping up pretty
8 soon, I think. And so it would -- if we
9 could merge the two, it would be nice to
10 have the meetings at the same time. We
11 could just have an agenda that talks about
12 the specific issue we've got and then we'll
13 have the second issue. Whenever we discuss
14 legislation, it may be that some of the
15 stuff we're discussing is going to require
16 that anyway, so --

17 MR. HILL:

18 That's what I was thinking. It seems
19 to me like it -- whoever is on this panel
20 has a little bit of information on what is
21 going on and what you're going to be
22 bringing up or potentially bringing up in
23 legislature. Whereas somebody that's not
24 serving on the panel --

25 MR. THERIOT:

1 Any recommendations, of course, that
2 we end up with will be brought in front of
3 this board before we take them. Because
4 otherwise, we would run afoul sometimes of
5 the public meetings law and we don't want to
6 take that chance. So anything that --
7 anything that we actually -- the workgroup
8 settles on will, of course, come up at these
9 meetings.

10 MR. MARCELLO:

11 I don't know -- I understand the
12 concept. I agree with the concept. Have --
13 has it -- have you guys, in-house, thought
14 of -- brought it any further than that?
15 Meaning, will it have to be -- when you say
16 the board will set or recommend a rate, if
17 you will, per -- per -- per gallon rate, is
18 there going to be a window?

19 MR. THERIOT:

20 Yes. That's what we anticipate.

21 MR. MARCELLO:

22 Right.

23 MR. THERIOT:

24 There would be a minimum because we
25 don't want -- we don't want the fund to run

1 out of money.

2 MR. MARCELLO:

3 Right.

4 MR. THERIOT:

5 We don't want -- don't want to operate
6 at a 5 million deficient.

7 MR. MARCELLO:

8 Right.

9 MR. THERIOT:

10 Which many states have had that
11 problem. And the key is to try match
12 expenditures to income.

13 MS. DELAFOSSE:

14 But -- yes. And at this point in time
15 though, we have more income than we have
16 obligated.

17 MR. THERIOT:

18 Yes.

19 MS. DELAFOSSE:

20 So if -- I mean, we could run the
21 numbers and do some projections for the
22 workgroup or for the board meeting. But, I
23 mean, the 40 million could happen at the end
24 of fiscal year '18, aggressively. Certainly
25 in '19. So if we want a -- a -- if we want

1 a solution that is, I believe, is easier for
2 everybody and then possibly more palpable,
3 because you don't want to stop collecting
4 for two or three years and then you're like,
5 oh, well, never mind back to -- back to
6 .008. Like, stopping and starting -

7 MR. MARCELLO:

8 Yes.

9 MS. DELAFOSSE:

10 You know, I think everybody has a --
11 doesn't want to do that.

12 So I -- you know, I -- the way we
13 envision it working is that we could do
14 projections based on, you know, what our
15 expenditures have been like, what we think
16 they're going to be like in the future, how
17 much surplus we have at the time, and then
18 recommend, you know, if we do .004, this is
19 what it would look like. If you recommend
20 .005, this is what it would look like. And
21 then the board could look at those proposals
22 and say, okay, we're most comfortable with
23 .005, and then make that formal
24 recommendation on the minutes or, you know,
25 in the board meeting to the secretary.

1 MR. THERIOT:

2 By formal vote.

3 MR. MARCELLO:

4 Right.

5 MR. THERIOT:

6 And that would be -- that resolution
7 would be taken to the secretary, just as we
8 do on the deductible.

9 MR. MARCELLO:

10 Exactly.

11 MR. ST. ROMAIN:

12 On a yearly basis.

13 MR. THERIOT:

14 On an annual basis. Because we had --
15 most of the stuff for -- for fees is going
16 to have to be fiscal year. So you're going
17 to have to make that decision in February
18 for a July 1st implementation.

19 MR. BAKER:

20 That would give ya'll four months to -
21 - or so to let your members know and make
22 everybody aware so they can adjust their
23 systems.

24 MR. ST. ROMAIN:

25 Now, to have -- to have such a -- a

1 rate change, do you need legislation for
2 that?

3 MR. THERIOT:

4 We do.

5 MR. ST. ROMAIN:

6 Yes.

7 MR. THERIOT:

8 Okay. That would require legislation,
9 because the statute sets it at .008. In
10 order to set it as anything else, we have to
11 change the actual statute. But that -- you
12 could do that the same way that the statutes
13 work with the deductible. You would place
14 it into the statute. We -- we would get in
15 the -- in our workgroup for legislation, we
16 could actually have a proposal, but it would
17 put in there instead of .008, it would say,
18 set by the secretary between .02 and .08.
19 Okay. Something like that. A maximum of
20 .08, a minimal of .02. But -- and -- and
21 then the board -- you'd put it in the powers
22 of the board, because the board shall
23 recommend each year adjustments in the
24 amount of the fee pursuant to the statute.
25 MR. ST. ROMAIN:

1 Now, the timing of the legislative
2 session and getting that bill to pass, if it
3 were, and being able to implement the change
4 before fiscal year --

5 MR. THERIOT:

6 It would be 2018, more than likely --
7 2019 now, because the bills wouldn't take
8 effect during this spring -- this spring
9 session. They wouldn't take effect until
10 the Governor's signature are all disbursed.

11 MR. MARCELLO:

12 Right.

13 MR. THERIOT:

14 So --

15 MR. BAKER:

16 But every year after that, we wouldn't
17 need --

18 MR. THERIOT:

19 We wouldn't need new ones --

20 MR. ST. ROMAIN:

21 No, no, no. But would you hit the 40
22 million before you could react to it?

23 MS. DELAFOSSE:

24 Yes, I mean, the interest money is
25 another piece of that that's for the

1 abandoned tank program. I -- you know, I
2 think it's possibly an oversight. We --
3 that revenue, according to the statute, is
4 not available for the regular site work.
5 And it's 11 million dollars at this point in
6 time. And it is included in these numbers.
7 And it's 11 million dollars that -- you know
8 -- you know, at least that first -- in our
9 first glance and analysis of it should not
10 be. So if you take the 11 million out,
11 you're only at 16.

12 MR. MARCELLO:

13 Well, I -- I've got -- I've got a --
14 a ton of recommendations and thoughts and so
15 forth, but let's save them for the -- for
16 this -- for this workgroup because that's
17 the time to discuss it.

18 MR. THERIOT:

19 We just -- we're bringing it up in
20 other business --

21 MR. MARCELLO:

22 Yes.

23 MR. THERIOT:

24 -- so that everybody would be aware
25 that we are thinking of that.

1 MR. MARCELLO:

2 Great.

3 MR. HILL:

4 That adds to what -- what I heard
5 Frank say at lunch accents what you said
6 about the same.

7 MR. MARCELLO:

8 Yes.

9 MR. BAKER:

10 It allows you to handle fluctuations
11 and needs as you get more or less sites, as
12 we look at what's going on in the market.
13 It gives you some flexibility that we don't
14 have now.

15 MR. ST. ROMAIN:

16 Well, that depends what we do with
17 non-compliant deductibles, above ground
18 storage tanks.

19 MR. THERIOT:

20 Yes. Well, that is another area where
21 those who work with Sam's workgroup have
22 heard some of the suggestions for that. So
23 we can discuss those in legislative session
24 meeting too.

25 MS. DELAFOSSE:

1 And as Jeff mentioned too, the -- the
2 new guidance document is out and there were
3 some increases in the rates in there with
4 the four percent increase and the plan to
5 revisit those rates a little more regularly.
6 So that needs to be taken into account and
7 all the obligation calculations as well,
8 which will be presented. You know, we have
9 to make those changes between now and the
10 first quarter of fiscal year '18's board
11 meeting. So we'll see some change in there
12 too, but it's a fluctuating number.

13 MR. MARCELLO:

14 Okay. While we're on other business,
15 thank you, Jason, for that -- that program
16 that you illustrated to us. And it -- it's
17 -- it's -- I would like for Natalie to get
18 a copy of that because it's -- it's right to
19 the point and it's -- it's not for me or us
20 that's sitting here. It's for members of
21 our board, our organization for Louisiana
22 Oil Marketers. If anybody's -- especially
23 the next -- we have a next generation
24 committee, I'd like for them to see it. So
25 that would be fantastic if we could get a

1 copy and then Natalie can make copies
2 thereafter and hand out. So thank you.

3 MR. HILL:

4 Any other business to discuss? Other
5 business, new ideas or anything?

6 (No response.)

7 MR. HILL:

8 Well, if not, I guess we'll hear a
9 motion to adjourn.

10 MR. MARCELLO:

11 Before we adjourn, this committee that
12 we're talking about, if it's going to remain
13 the same, can -- will a memo be sent out
14 that we -- we set up this -- this other
15 meeting we had, we set up October 5th. Are
16 we going to try to do the same date?

17 MR. THERIOT:

18 Yes.

19 MR. MARCELLO:

20 Wonderful.

21 I make a motion we adjourn.

22 MR. HILL:

23 Do I hear a second.

24 MR. ST. ROMAIN:

25 Second.

1 MR. HILL:

2 Thank you.

3 **THE MEETING ADJOURNED AT 2:10 P.M.**

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C E R T I F I C A T I O N

I, Mark Lacour, Certified Court Reporter in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that the above referenced individual to whom oath was administered, after having been duly sworn by me upon authority of R.S. 37:2554, did testify as hereinbefore set forth in the foregoing pages, that this testimony was reported by me in the stenomask reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and advisory opinions of the board; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

Mark Lacour, C.C.R.
89054