

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 1:09 p.m., on February 23, 2017.

BEFORE:

Lori B. Overland
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
Johnny Milazzo
Perry Theriot
Nick St. Romain
Steve Burnham
Roger Bright
Theresa Delafosse
Frank Marcello

Melissa Vizinat
Sam Broussard
Jason Efferson
Shawn King
Randi Stump
Natalie Isaacks
Cameron Jones
Kyle Blanchard
Roger Gingles
Melissa Whitaker
Becky Jones
Greg McCarty
Vicki Hadwin
Linda Hicks
Rhonda Cook

* * * * *

I N D E X

EXAMINATION :

PAGE (S) :

None

EXHIBITS :

None

REPORTER'S PAGE

98

REPORTER'S CERTIFICATE

99

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MR. HILL:

Good afternoon, everyone. Glad everyone could attend. I would like to call this meeting to order and would like to start with a roll call and an adoption of August and November 2016 board meeting minutes. Could we have a roll call?

MR. THERIOT:

Perry Theriot, Louisiana Department of Environmental Quality Legal Division.

MR. FRANKLIN:

Durwood Franklin, DEQ Trust Fund.

MR. BAKER:

Jeff Baker, DEQ Trust Fund.

MR. FULTON:

Gary Fulton, UST Division.

MR. BURNHAM:

Steve Burnham, Engineering Associates.

MR. BRIGHT:

Roger Bright, Jones Environmental.

MR. MILAZZO:

Johnny Milazzo, Louisiana Oil Marketers.

MR. ST. ROMAIN:

1 Nick St. Romain, Louisiana Oil
2 Marketers.

3 MR. HILL:

4 Kerry Hill, Louisiana Oil
5 Marketers.

6 MS. DELAFOSSE:

7 Theresa Delafosse, I am in Financial
8 Services at DEQ.

9 MR. MORIN:

10 Cy Morin, DEQ Audit Services.

11 MS. VIZINAT:

12 Melissa Vizinat, DEQ Trust Fund.

13 MR. BLANCHARD:

14 Bryon Blanchard, DEQ Audit Services.

15 MS. COOK:

16 Rhonda Cook, PPM Consultants.

17 MS. HICKS:

18 Linda Hicks, PPM Consultants.

19 MR. BROUSSARD:

20 Sam Broussard, Louisiana DEQ UST
21 Division.

22 MS. ISAACKS:

23 Natalie Isaacks, Louisiana Oil
24 Marketers.

25 MS. WHITAKER:

1 Melissa Whitaker, Jones Environmental.

2 MS. JONES:

3 Becky Jones, Jones Environmental.

4 MR. JONES:

5 Cameron Jones, Jones Environmental.

6 MR. KING:

7 Shawn King, Jones Environmental.

8 MR. McCARTY:

9 Greg McCarty, DEQ UST.

10 MR. BLANCHARD:

11 Kyle Blanchard, UST.

12 MR. GINGLES:

13 Roger Gingles, DEQ Office of the
14 Secretary.

15 MS. HADWIN:

16 Vicki Hadwin, DEQ UST.

17 MR. EFFERSON:

18 Jason Efferson, DEQ Trust Fund.

19 MS. STUMP:

20 Randi Stump, DEQ Trust Fund.

21 (INAUDIBLE):

22 (Inaudible), DEQ Office of Secretary.

23 MR. HILL:

24 Thank ya'll. Could I hear a
25 consideration, adoption of August and

1 November 2016 board minutes?

2 MR. BRIGHT:

3 Motion to adopt.

4 MR. HILL:

5 I've got a motion. Do I hear a
6 second?

7 MR. ST. ROMAIN:

8 Second.

9 MR. HILL:

10 Thank you. The minutes for 2016 now
11 are officially adopted.

12 Item number three, election of a
13 chairperson for 2017. Do I hear a
14 nomination?

15 MR. ST. ROMAIN:

16 I nominate Kerry Hill.

17 MR. BRIGHT:

18 Second.

19 MR. HILL:

20 Well, thank ya'll. Do we need to vote
21 on that further? All in favor?

22 (All indicated, yes.)

23 MR. HILL:

24 I will accept this position with
25 honor. Thank you.

1 Item number four, the financial
2 services report. May we ask Theresa
3 Chatelain to give us that, please.

4 MS. DELAFOSSE:

5 Yes, sir. Since we went to press here
6 on the packets, I have changed my name. So
7 I guess I'll have a new little placard when
8 we're back in May. My last name is now
9 Delafosse, so that's -- D-E-L-A-F-O-S-S-E.
10 So that's why introduced myself that way.

11 We have the financial statement here.
12 The first column is year ended fiscal year
13 2016. And then the two right-hand columns,
14 or the middle and right-hand column, is a
15 comparative statement. So that shows as of
16 12/31/2015 compared to as of 12/31/2016. So
17 it's good comparative information so you can
18 see where we were at the same point in time
19 for the past two consecutive years.

20 As you'll see at the bottom of the
21 page, the unobligated balance is in a much
22 better position than it was last year. We
23 have about 13 million unobligated. We're
24 moving right along, but there are a few
25 little differences. Our bulk distribution

1 fees are down a little as of 12/31. Didn't
2 get a chance to look into that too much, but
3 it's just most likely a timing issue.

4 And then, jump down to the
5 disbursement section. Our claim for
6 reimbursement are a little lower. I had
7 Jeff pull some information for that and we
8 had -- the applications that we received
9 during that time period were about three
10 million dollars less or just under three
11 million dollars less. So that's making up
12 the vast majority of that difference there.
13 We actually had less in pending applications
14 in 2016. We had processed more of the
15 dollar value. I think that's about it for
16 that page.

17 And then, if you turn to the second
18 page. This shows what the estimated
19 transfer will be of the -- to the -- what
20 the motor -- what the trust fund can't cover
21 and the expenditures. It gives us a program
22 balance at the end of the year negative four
23 point nine million for this year, it's
24 projected. And then, fiscal year '18's
25 projection is five point two million.

1 I don't know if ya'll have any
2 questions about the financial information?

3 MR. HILL:

4 Does anybody have any questions about
5 Theresa's report on financials at this time?
6 (No response.)

7 MR. HILL:

8 If not, do I hear a motion to accept
9 the financial report?

10 MR. BRIGHT:

11 Motion.

12 MR. ST. ROMAIN:

13 Second.

14 MR. HILL:

15 We have a motion and a second. Thank
16 you.

17 Thank you, Theresa.

18 MS. DELAFOSSE:

19 Sure.

20 MR. HILL:

21 Item number four -- number five, I'm
22 sorry, auditor's status report by Cy.

23 MR. MORIN:

24 Yes. Cy Morin, DEQ Audit Services.
25 If you'll turn to tab five.

1 The first page of this report details
2 28 open motor fuel audit cases. One case
3 has been paid in full and is being prepared
4 for closure. The total assessment was
5 \$146.99.

6 Three cases are under review and 17
7 cases are awaiting review. Pending final
8 review, these cases represent two potential
9 credits of approximately \$3,800 and 18
10 potential clean audits with no assessment.

11 Four cases are still in progress with
12 results to be determined. Two cases are in
13 the report writing phase. Both are
14 potentially clean audits with no assessment.

15 One fiscal year '17 case has been
16 scheduled to start on March 1st.

17 Since the last meeting, two new cases
18 have been added to the list and seven cases
19 have been closed and removed from the list.

20 Of the seven removed, five were clean.
21 Three were assessed a total of approximately
22 \$4,900, which was paid in full.

23 And if you'll go ahead and turn to
24 page two. The department continues to
25 pursue these four cases legally. There were

1 five cases on the list previously. One has
2 been removed. It was paid in full and
3 closed.

4 The first case has a trial date set
5 for March 22nd; however, legal is in the
6 process of obtaining a consent judgment with
7 the defendant.

8 At the time this report was generated
9 on February 16th, the defendant in the
10 second case had not remitted any payments
11 since November; however, a payment was
12 received yesterday for \$250. If the
13 defendant fails to make future payments, the
14 file will be referred to ODR for collection.

15 Currently, ODR is not accepting
16 referrals. They're going through an upgrade
17 in the system. So I guess when we're
18 notified that they're accepting them again,
19 we'll go ahead and forward anything that
20 needs to be forwarded.

21 The status remains the same for the
22 third case. It's been at ODR since October
23 14th, 2015. And we have not received any
24 payments from ODR as of February 16, 2017.

25 And there's been no change in the

1 fourth case. The file is ready for referral
2 to ODR. Again, once ODR is accepting
3 referrals, we'll -- we'll forward that on to
4 them.

5 The four cases listed here represent a
6 total outstanding amount of \$119,473.30.
7 That's \$250 different than what you're
8 seeing on the report because it was
9 generated before that payment.

10 And that concludes my report.

11 MR. HILL:

12 Okay. Thank you, Cy.

13 Anybody have any questions pertaining
14 to Cy's report?

15 MR. MILAZZO:

16 Cy, what is it about one a month or so
17 you guys will audit?

18 MR. MORIN:

19 What is that?

20 MR. MILAZZO:

21 How many do you try to get a year?

22 MR. MORIN:

23 For the last few years, we've been
24 doing 18 -- around 18 a year. We did reduce
25 it this year. We're trying to reduce our

1 backlog, take care of our backlog. Once we
2 do take care of that, then we do intend to
3 increase it again.

4 MR. MILAZZO:

5 Let me just offer, nice job with that.

6 MR. MORIN:

7 Thank you.

8 MR. HILL:

9 Thank you, Cy.

10 Do I hear a motion to accept Cy's
11 status report?

12 MR. MILAZZO:

13 So moved.

14 MR. ST. ROMAIN:

15 Second.

16 MR. HILL:

17 I got a first and a second. Thank
18 ya'll.

19 We'll move on to item number six, Jeff
20 Baker on the trust fund status report.

21 Jeff?

22 MR. BAKER:

23 Good afternoon. If ya'll would please
24 refer to tab number six in your packets.

25 These are the figures for the second quarter

1 of fiscal year 2017.

2 During the second quarter of fiscal
3 year 2017, the trust fund received 248
4 applications, totaling \$2,988,407. As of
5 the end of December 2016, the trust fund had
6 228 pending applications to process, which
7 had requested amounts totaling \$2,474,310.
8 146 applications were processed for payment
9 during this fiscal quarter, totaling
10 \$1,747,344. And 17 applications were
11 returned with deficiencies.

12 If you'll please turn to the page
13 titled the monthly motor fuel trust fund
14 obligation determination. This is the
15 worksheet listing various component
16 determinations of the potential obligation
17 against the trust fund as of the end of
18 December 2016.

19 For sites in the corrective action
20 phase, the outstanding liability of
21 corrective action plan budgets and estimated
22 cost to reach closure as of the end of
23 December 2016 was \$24,327,990. This
24 includes both CAP budget remaining amounts
25 and the RAC estimated cost to closure

1 amounts.

2 The fund obligation recognized for
3 sites without ROG approved CAP budgets is
4 \$33,071,471. This is determined using a
5 three year average site closure costs,
6 applying these costs to the active trust
7 fund sites without current CAP budgets and
8 subtracting their current cost from that
9 number.

10 The fund obligation recognized for 18
11 sites that have been determined to be trust
12 fund eligible, however, have not submitted a
13 reimbursement applications is \$5,747,922.
14 This is also determined using the three year
15 average closure costs and applying these
16 costs to sites that have requested
17 eligibility but as of yet have not submitted
18 a request for reimbursement from the fund.

19 The five year projected cost fund
20 obligation related to the motor fuel trust
21 fund to the environmental trust fund
22 transfers is \$18,624,277. This estimate
23 uses the three year average dollars
24 transferred from the motor fuel trust fund
25 to the environmental trust fund and

1 multiplies that average by an estimated five
2 years.

3 If you'll note the legal-sized page at
4 the -- the last page of your packets, the
5 number of trust fund sites that have
6 received the no further action thus far in
7 2016 are four.

8 Now, what's not on this page is the
9 number of potential trust fund sites that
10 were reviewed and made eligible during the
11 current fiscal year, not -- not the last
12 period, but the whole fiscal year has been
13 ten sites, representing 12 separate
14 incidents.

15 Some other points of interest. I
16 wanted to give the board an update on the
17 progress we made towards the revised cost
18 control guidance document. Draft copies of
19 the revised document was sent to the RAC
20 stakeholders who expressed an interest in
21 participating, as well as the board members
22 and the -- and others. The stakeholder
23 group has met twice and has addressed a
24 number of issues in question concerning the
25 draft revision. We have been taking meeting

1 notes of our discussions, which will be
2 available on our EDMS system. That's
3 electronic document management system. So
4 all of our meeting notes for further
5 discussion and -- and reference will be out
6 on the server.

7 We hope to have a couple more meetings
8 to complete some of the ongoing projects and
9 then provide a completed draft document to
10 the board members for final review possibly,
11 we're hoping, in the next two to three
12 months.

13 Another point of interest, in a recent
14 annual audit of the legislative auditor, a
15 finding was documented stating that DEQ had
16 incorrectly recorded budgets for some active
17 corrective action plans, which resulted in
18 an overstatement of the obligation of the
19 fund. This was based upon a random sampling
20 and a number of errors were found. In
21 response, the trust fund staff has corrected
22 these recorded errors and modified it's
23 processes to reduce the potential of these
24 future errors and is performing a review of
25 all current and historical CAP budgets for

1 active sites to verify their accuracy in our
2 system.

3 The majority of these errors were
4 related to the cost to close estimates.
5 They were -- these were sites that had
6 multiple CAP budgets. So the first CAP
7 budget was approved and cost -- the
8 estimated cost to close was put in the
9 database. Then three or four years later,
10 another CAP budget was approved. Well, when
11 that was put in the database, the original
12 estimated cost to close was not negated out
13 of the system, which created a -- a
14 duplicate entry there. So we've gone
15 through. We've corrected all of those we
16 could find and we're basically going through
17 every CAP budget that's currently out there
18 in our database for active systems and we're
19 verifying, going back in EDMS, and verifying
20 that they are correct and everything is the
21 way it should be.

22 And we should have -- we hope to have
23 that done in the next few weeks.

24 That's the end of my presentation.
25 Does anybody have any questions?

1 (No response.)

2 MR. HILL:

3 If no one has any -- any further
4 questions related to Jeff's report, could I
5 ask for a motion to accept it?

6 MR. BURNHAM:

7 Motion to accept.

8 MR. HILL:

9 Do I hear a second?

10 MR. MILAZZO:

11 Second.

12 MR. HILL:

13 Thank you. Thank you, Jeff.

14 Now, we'd like to ask item number
15 seven, Mr. Perry to bring us up to date on
16 third party claims.

17 MR. THERIOT:

18 I'm happy to report since our last
19 meeting, we've had no further third party
20 claims. The only ones we have are the ones
21 that we currently reported last meeting. So
22 that's actually good news.

23 MR. HILL:

24 That is good news.

25 Anybody have --

1 MR. MILAZZO:

2 I second that good news.

3 MR. HILL:

4 You second that good news. I think
5 everybody first -- gave us a first and
6 Johnny seconded it, so we -- we accept that.
7 Thank you.

8 Number eight, any other business that
9 anyone would like to bring up at this time?

10 A) evaluation of allowing failed tanks
11 in active tank beds to remain in temporary
12 closure. Sam Broussard.

13 MR. BROUSSARD:

14 All right. Thanks, Kerry.

15 Yes, so this is a conversation that
16 we've been having internally and our folks
17 wanted to -- us to bring it up to the
18 advisory board to see if you guys could give
19 us your opinion on whether or not you guys
20 are okay with us proceeding with -- with
21 what we're proposing here.

22 So let me start out. I'm going to
23 give you a little bit of background. Not
24 every situation you're gonna encounter in
25 real life is gonna be captured in the

1 regulations. And this is one of those
2 things. It's something that just -- it's --
3 the regs are silent on how to deal with this
4 issue.

5 So what we have is, when you have a
6 tank that fails, there's some protocol you
7 have to do that's specific in the regs. You
8 have to figure out if the tanks leaking.
9 You do a tightness test. It fails. You
10 have to do some soil borings. What the regs
11 tell you to do after that is either repair,
12 replace, upgrade or permanently close the
13 tank. So there's no option for putting that
14 tank in temporary closure. But in reality
15 in the real world, what you have is often,
16 you would have a tank that's failed and it's
17 in a tank hole with adjacent tanks to it.
18 So the economics may not be right to repair
19 or -- and you can't really replace it
20 because it's in the same tank hole as some
21 active tanks. You can't fool with it
22 without damaging the other active tanks and
23 piping associated it. So folks have been
24 leaving those in temporary closure. And
25 we've actually allowed that in the past.

1 But as it's coming up, our legal guys are
2 telling us, "Well, you know, it's not in the
3 regs, so you guys should not be doing that.

4 So -- so what I did was basically came
5 up with a proposal of just a few steps that
6 we would require owners to do in situations
7 where we would allow that to happen,
8 allowing those failed tanks to remain in
9 temp closure, until the owner decides what
10 he wants to do with the other tanks in that
11 tank hole. So what we said was, first of
12 all, if -- we're proposing, if your failed
13 tank meets those conditions, it is in the
14 same tank hole as active tanks, and you did
15 the required site check like you're suppose
16 to do, you know, soil borings to see if the
17 release got out or whatever, you have to
18 remove the product in the tank. That's
19 required in the regs now. We would require
20 in addition to that, locking the fuel port
21 to make sure no product gets added to it,
22 disconnecting the piping, the product piping
23 associated with that tank, documenting -- we
24 would document in EDMS that there is a
25 failed tank that's locked down in that tank

1 hole and we would apply a red tag, delivery
2 prohibition tag to that tank. And the
3 reason we would do that is, in the event
4 that owner decides to sell that station, the
5 new owner may not know the history of it, he
6 may not know that he had a failed tank. So
7 we would take those steps in order to leave
8 that temporary closed tank in that tank hole
9 without having to -- to make a decision that
10 could effect the other active tanks in that
11 tank hole.

12 And -- and one other thing, I ran this
13 by EPA, Region 6, and -- the whole scenario
14 and -- and they said, "yea, we let people do
15 that all the time. We" -- "we expect other
16 states are doing the same. We would not
17 make them permanently close or upgrade that
18 tank."

19 So -- so what we're asking is if you
20 guys would be okay with us going through
21 with that policy?

22 MR. HILL:

23 Sam, would you -- you may have
24 mentioned this and I missed it. But would
25 you continue to charge the annual

1 underground fee just for record keeping?

2 MR. BROUSSARD:

3 Yes. Yes, that -- that fee is charged
4 until that tank is permanently --

5 MR. HILL:

6 Is permanently removed, right.

7 MR. BROUSSARD:

8 So a temporary closed tank still has
9 to meet all the other requirements of
10 erosion protection and pay the annual fees
11 and all those other things.

12 MR. HILL:

13 Is this something you'd like us to
14 vote on today?

15 MR. BROUSSARD:

16 Yes, I would. Because I -- I've been
17 asking our folks to -- to give me an answer
18 for several months now.

19 MR. ST. ROMAIN:

20 But at that point, it could stay
21 temporary closure indefinitely, or is there
22 still a time --

23 MR. HILL:

24 Permanent closure.

25 MR. BROUSSARD:

1 Well, the way the regs read, sites can
2 stay at temporary closure indefinitely as
3 long as the corrosion protection is met. In
4 these situations, we -- there's other
5 active tanks in that tank hole, so we -- we
6 presume that when that owner addresses those
7 active tanks, either -- if he's going to
8 close them, he'll close that one at the same
9 time or if he replaces them, he'll replace
10 that at the same time.

11 And last -- one other thing, we -- the
12 -- the prospect of closing that site -- that
13 tank in place, you're basically filling it
14 full concrete. So then you would have --
15 when you're going to go to remove those
16 other two tanks that are there or whatever,
17 other tanks in that tank hole, you would
18 have a big blob of concrete to dispose of
19 and have to deal with. And it's just an
20 extra expense. We feel like it's too much
21 for the owner to bear.

22 MR. MILAZZO:

23 So, Kerry -- Mr. Chairman, let me ask,
24 in the role that we play here, would it be
25 fair -- because I think this is a fair

1 request quite frankly. I would have no
2 problem with it. But it would -- would it
3 be fair for this group to ask maybe -- our
4 Executive Director is here -- maybe just
5 ask for some input from the floor, you know,
6 as -- as we take action that would really
7 force, you know, some -- some addition and
8 consideration to the panel, to the
9 membership. I certainly support it
10 personally up here, and I think it's a fair
11 request to the DEQ, but I want to be careful
12 -- just maybe, Natalie, if it's okay to ask
13 your thoughts? Because it represents -- it
14 represents -- is that a fair request?

15 MS. ISAACKS:

16 Yes, yes.

17 MR. HILL:

18 That's a good consideration, Johnny.

19 MS. ISAACKS:

20 I mean, I'm --

21 MR. HILL:

22 Could we hear ya'll's comments on
23 that?

24 MS. ISAACKS:

25 Ya'll make a decision here, because

1 that's what ya'll are here, you know, for.

2 MR. MILAZZO:

3 Yes. Well, quite frankly, I think
4 it's been a good consideration to DEQ all
5 along. But this -- this does buck it up and
6 it -- it takes risk of further action that
7 probably could be minimized with these
8 actions.

9 MR. HILL:

10 I would think that most of the members
11 of Louisiana Oil Marketers would be
12 supportive of that. And thank you, Johnny,
13 for expressing the consideration thought
14 that they've put into it, but I -- Perry,
15 would you like to comment?

16 MR. THERIOT:

17 A couple things. We -- it is still
18 there. There will be no decision. What
19 they're wanting -- the vote you would take
20 would be in an advisory capacity. If you're
21 uncomfortable with it, you could certainly
22 put it to the next meeting and take your
23 vote on it then, if you want time to -- to
24 speak to the membership. Either way is
25 fine. It was on the agenda.

1 MR. HILL:

2 Right.

3 MR. THERIOT:

4 So if you want to take a vote, you
5 can. But there's nothing that requires you
6 to do so.

7 MR. HILL:

8 Johnny, do you --

9 MR. MILAZZO:

10 I -- you know, I -- quite frankly, I
11 feel very strongly about the request. And
12 we've got an Executive Director here and,
13 you know, we should all be doing what is in
14 the best interest of our responsibility.
15 And I'm okay taking a vote after Natalie's
16 comment.

17 MR. ST. ROMAIN:

18 Steve, you got any comment --

19 MR. BURNHAM:

20 Yes.

21 MR. ST. ROMAIN:

22 -- as a RAC?

23 MR. BURNHAM:

24 We're good. I -- I agree with the
25 procedure. We're doing it already, right,

1 Sam, for --

2 MR. BROUSSARD:

3 Yes. We have at least 20 sites that
4 are on my radar that definitely fall under
5 this category. And if -- if we chose to not
6 allow it, we would basically be telling
7 those folks, "okay, we've allowed it in the
8 past, but now you have to address that."

9 MR. BURNHAM:

10 Right.

11 MR. HILL:

12 Well, I would say at this time, so it
13 would be on record, that we would take a
14 vote. I'd ask for a vote or a motion for
15 Sam's discussion to be taken to the next
16 level. Do I hear a motion for that vote to
17 --

18 MR. MILAZZO:

19 So we need a motion to pursue a vote?

20 MR. BURNHAM:

21 To support the propose -- his
22 proposal. Is that what our motion is?

23 MR. HILL:

24 To -- to -- let's have a motion to --
25 yes.

1 MR. THERIOT:

2 I think the proper way to put it in
3 perspective would be, you would have a
4 motion to take a vote supporting the --
5 advising the Secretary that you think it
6 would be a good practice to allow a single
7 failed tank in a -- in a tank hole with
8 more than one tank to remain in temporary
9 closure until such time that -- as a
10 decision is made on whether to upgrade or
11 close the tanks.

12 MR. BURNHAM:

13 What he said.

14 MR. HILL:

15 We needed an attorney to put it in
16 attorney's language, didn't we?

17 MR. MILAZZO:

18 Let's take a shot at that. So -- so -
19 - you know, I -- I would like to make a
20 motion that we accept considerations for
21 temporary closure, and that being, that we
22 allow tanks to remain in an existing tank
23 hole with other active tanks, so long as we
24 accept the requirements under temporary
25 closure to be more carefully defined in the

1 language of the recommendation.

2 MR. HILL:

3 We've got a motion. Do we hear a
4 second?

5 MR. BRIGHT:

6 Second.

7 MR. HILL:

8 All in favor?

9 (All indicated yes.)

10 MR. HILL:

11 So moved. Thank you.

12 Next, we have discussion of the
13 owner/operator financial responsibility
14 related to deductible requirements. Perry,
15 Gary, Jeff and Sam all may discuss this
16 issue with us.

17 MR. THERIOT:

18 This is -- one of the items that this
19 board has power to do is to recommend to the
20 Secretary each year it's recommendations on
21 the owner's responsibility as part of the
22 fund's -- what's commonly referred to as the
23 -- deductible. Even though we aren't an
24 insurance company and it isn't a deductible,
25 it is the owner's responsibility amount.

1 This -- the department has been looking into
2 some -- some of your membership has
3 expressed to us differing items dealing with
4 possibly going to a change in the amount of
5 the deductible to all the way to eventually
6 maybe doing away with the deductible.

7 The department has been having
8 internal discussions. We have begun the
9 review of what other state's funds have been
10 doing. We've looked at -- there are pros
11 and cons for each type of operation and
12 there are more than one solution nationwide
13 to what people are doing. So what we were
14 going to do was put this out for you guys to
15 begin thinking about and, as part of your
16 responsibility, when you go to make your
17 recommendation to the Secretary on the
18 owner's thing, the discussion of what to
19 do with the deductible. The department has
20 had lots of problems and is increasingly
21 getting longer lists of sites where smaller
22 operators are claiming not to have the
23 amount of money to pay the deductible.

24 For those of you who have been around
25 a while, you may remember a few years back,

1 we got legislation passed that allowed us to
2 substitute a lien for those. But that lien
3 is restricted to people who are not still
4 dispensing petroleum. So that would only be
5 for sites that were closed.

6 We are getting sites now that continue
7 to operate and they tell us they don't have
8 the money for the deductible, so they are
9 essentially ineligible and -- because they
10 can't meet the owner's share. And I'm not
11 allowed to substitute a lien under those
12 cases. So there's been some back and forth
13 about it. And some states have already gone
14 to a zero deductible. But some of them have
15 restrictions on how you get to a zero
16 deductible. Some of them have a sliding
17 deductible. Some of them maintain a
18 traditional deductible, like we have today.

19 Any changes in this deductible would
20 only go -- of course, we could only do by --
21 by regulation for the regular owner share.
22 There is a statute setting the non-
23 compliance deductible which would have to be
24 changed by the legislative for us to remove
25 that one.

1 So that's one of the things that we
2 would have to discuss. If we were to go
3 ahead and move what we currently call the
4 non-deductible -- I mean, the non-compliance
5 deductible amounts, which are in the statute
6 to an endorsement function where if we get a
7 report of a release, currently we don't do
8 anything special other than remediation
9 begins to take over and the trust fund sends
10 out a letter asking for the RAC selection
11 and the application for eligibility. One of
12 the things we're proposing to do is to do
13 release inspections so that when the
14 department gets -- instead of having a non-
15 compliance deductible or a -- when we get a
16 report that there is a release, an inspector
17 will go out to inspect the facility. And if
18 it's found to be non-compliant, instead of -
19 - instead of just sending out at a later
20 time with the first application a non-
21 compliance deductible, the facility will
22 incur a penalty for being in non-compliance.
23 But we would move directly to clean up.

24 That's one of the options. There's
25 some others. I don't know how many people

1 have seen it, but there's some states that
2 use a sliding deductible based upon
3 differing things, how well people have done
4 on their last inspections and that sort of
5 thing.

6 The State of Utah uses a owner-driven
7 sliding deductible where the -- the owner
8 can go online like an actuary would do,
9 figure out how much it would cost him to do
10 X, Y and Z, and then that thereby reduces
11 the deductible to zero. That's being done
12 in Utah. That's one of my favorites, but I
13 don't get to make the decisions, so --

14 But there's lots of possibilities and
15 most of them involve somehow going to first
16 dollar availability so that sites don't sit
17 in -- on a list that the department
18 maintains.

19 And so we would like the board to
20 begin looking into it themselves and to see
21 -- express to us when they get to look at
22 it what type of -- how they would like the
23 program to deal with this. Would they like
24 us to be more aggressive in penalties and/or
25 some other fashion, keep the owners involved

1 in -- in the actual operating of their tanks
2 in a proper manner so that they don't have
3 releases?

4 This is all being brought about by the
5 three year cycles that we have now begun
6 since the Energy Act. People are coming
7 into compliance a lot more. We have seen a
8 decline in the number of releases -- started
9 to anyway. And -- and so the assumption is,
10 if we can get the program operating in a
11 compliant fashion mostly -- you're always
12 going to have some -- there would be no need
13 for the owner's share anymore if everyone
14 that is involved is doing the correct thing
15 and we're not having the -- there will
16 always be releases that we're going to have
17 to clean up. There's no such thing as a
18 perfect tank, even if it's operated
19 according to the regulations.

20 So we were just opening the floor. If
21 ya'll have questions, ya'll want to put some
22 input on the record with us, we'd like to
23 hear about it.

24 MR. BURNHAM:

25 Perry, would the loss -- the amount of

1 revenue loss be felt, or is it such a
2 minuscule part of the revenue that it just
3 wouldn't matter?

4 MR. THERIOT:

5 I think Jeff has those figures.

6 MR. BAKER:

7 Well, actually, ya'll have those
8 figures. If you -- if you'll look at the
9 second page on tab six, it shows you the
10 deductible amounts that have been collected
11 -- really not collected, but documented for
12 the last several years. So you can see the
13 average ranges, you know, maybe 270 to
14 400,000.

15 MS. DELAFOSSE:

16 Not much.

17 MR. BAKER:

18 It's the page titled report of
19 cumulative activities of the motor fuel
20 trust fund. December 16. Under the
21 cumulative reimbursement clam activities,
22 the second column from the right says,
23 deductible amount. That's what we have
24 documented on an annual basis. You can see
25 the numbers from 2008 through 2016 and a

1 portion of 2017.

2 MS. ISAACKS:

3 Where at, Jeff? I'm sorry.

4 MR. BAKER:

5 It's under tab six.

6 MS. ISAACKS:

7 Is it the third -- third page?

8 MR. BAKER:

9 It's the second.

10 MS. ISAACKS:

11 The second page.

12 MR. BAKER:

13 Second page.

14 MR. MILAZZO:

15 Steve, what was the question?

16 MR. BURNHAM:

17 Well, the question was, of the -- of
18 all the revenue that comes in to the motor
19 fuels trust fund, is the deductible point
20 one percent of it?

21 MR. MILAZZO:

22 Yes, okay.

23 MR. BURNHAM:

24 Or is it five percent of it?

25 MR. THERIOT:

1 It's -- it is inconsequential compared
2 to the amount of money that comes in and
3 flows out.

4 MR. BURNHAM:

5 Right.

6 MR. THERIOT:

7 The basis of the original thinking by
8 the -- the owner's responsibility, was a way
9 to keep the owners involved. An owner --
10 other than a compliance function, an owner
11 who has basically unlimited insurance
12 doesn't have a lot of incentive to operate
13 his tanks correctly. That was the original
14 thinking. Okay. It was more to keep the
15 owners -- and if you remember originally --
16 those of us who have been around long enough
17 -- originally, the owner actually had to
18 spend his own money. See, that was what the
19 program used to be. And it was reimbursed
20 to the owner themselves. We haven't
21 operated that way in a while. Now, it's --
22 the -- the payments go directly to the
23 response action contractor. And the owner,
24 after his initial owner's responsibility
25 basically only signs the certification. So

1 the goals and the way we're doing it doesn't
2 match up with what the goals were
3 originally, which was to keep an owner
4 involved and thereby reduce the amount of
5 money he'd have to spend later. And that's
6 basically what the -- what -- what the owner
7 share does.

8 Today, we're finding impediments by
9 the owner's share in our smaller operator's
10 who are barely able to operate anyway. And
11 economically, it's becoming harder to get
12 them involved in paying the deductible and
13 then all -- then we get a backlog because it
14 takes a long time to get compliance and work
15 sufficient enough to get these things
16 rolling. We're trying to speed up the
17 process of cleanup. In the end, that's our
18 purpose here at DEQ when it comes to the
19 tanks, keep them compliant and cleanup the
20 mess when it's -- when it's -- when it
21 happens. That's what we're here for. And
22 that's one of the things that's pushing this
23 discussion.

24 MR. MILAZZO:

25 So, Perry, from my standpoint, and

1 again, I think perhaps for all of us here
2 and Louisiana Oil Marketers -- but I
3 certainly value that other input. This is
4 probably for the leadership of the
5 organization to give some consideration to.
6 But I -- I hear you loud and clear. Quite
7 frankly, you know, whether it be a small
8 operator, larger operator, it comes down to
9 the economics. And -- and to your comment,
10 you know, this is an insurance policy,
11 right, you kinda pay to play. So -- but if
12 there's an unlimited resource out there that
13 you lose your engagement of how well -- you
14 know, am I trying to be safe and just being
15 on high or am I just being clumsy? So I --
16 I don't think we're ever going to get there
17 if -- if we don't have some consequences.
18 And that's what this is really about. A guy
19 that really -- you know, there was a line of
20 unforeseen-ages. You couldn't have done
21 anything to stop the -- the -- that event.
22 But on the other hand, someone that's not
23 doing anything to police the event and there
24 are no consequences, I don't know that we're
25 ever going to get the environment where we

1 to be.

2 So -- but this is, I think -- and I
3 hope our association will be really tough
4 about this, and that is, we ought to be
5 walking side by side with this respect. We
6 ought to be working with those that don't do
7 the right thing, that there are consequences
8 in it and -- that ought to be involved. And
9 if your economics can't support that, maybe
10 you -- you -- you're not in the right
11 business, because we have responsibilities
12 here.

13 MR. THERIOT:

14 Well, that's --

15 MR. MILAZZO:

16 So that's kinda my point of view and I
17 -- I don't want to over speak here, but, you
18 know, there's some fundamental pieces here
19 that we all ought to be signing on to. And
20 that's -- I'm no longer in leadership. If I
21 was, I'd be slamming a hammer. But, you
22 know, this is for the team back at home to
23 really take a position on. And I hope at
24 the end of the day, it's to walk side by
25 side with respect to that. There should be

1 consequences.

2 MR. THERIOT:

3 Well, and that's one of the reasons
4 that Sam and I -- one of the discussions was
5 to transfer that obligation to a compliance
6 --

7 MR. BROUSSARD:

8 And if you guys would give me a little
9 time, I could maybe ease your mind on that
10 issue, Johnny.

11 Oh, when the statute came out that
12 required that non-compliance deductible, we
13 were not conducting compliance inspections.
14 We were at the most doing about 15 percent
15 of the universe, of the tank universe per
16 year, but that was at a maximum. We were
17 probably running about maybe ten percent of
18 our universe, which would be maybe 400
19 facilities at the most, per year.

20 So that -- and there were -- by 2008,
21 we still had -- at the end of 2007, we still
22 had about 1,000 to 1,200 sites that had
23 never been inspected ever.

24 So -- so the only form of punishment
25 for that -- for non-compliance was that

1 extra trust fund deductible. But since the
2 Energy Act came out in 2005, we had to start
3 inspecting facilities once every three
4 years. So since 2008, we've been inspecting
5 every UST site in the state once every three
6 years. Right now, we're on the third --
7 we're almost at the end of that third three
8 year cycle. So what we've been doing is
9 actually looking to see if there is better
10 compliance, based on that inspection break.

11 So prior to us starting our -- our
12 non-compliance where we were doing all of
13 those facilities back before the Energy Act,
14 we were looking at the non-compliance rates
15 and they were really high. Since we started
16 the three year inspections, they were high
17 and then now, they're going way down. So
18 we're looking at those trend lines. And the
19 trends definitely show we're definitely --
20 the sites are more compliant now than they
21 have been in the past, which was not the
22 case before the Energy Act started, when the
23 only thing for a non-compliance penalty was
24 that statute. So basically what we're
25 saying is that statute, you are required --

1 it is -- it is a penalty on the back end,
2 but it does not generate any kind of
3 increase in compliance rates.

4 So what I did was -- looking at the
5 trends is one thing. So I got together with
6 an economists and a statistician in
7 Washington, DC and said, "let's crunch our
8 numbers and let's see if this really has an
9 effect." So what we did was we applied --
10 we took all of our non-compliant data and
11 compliant data for Louisiana before the
12 Energy Act up until -- we stopped around
13 2014 is when we started the project. So we
14 looked at all of our inspections before the
15 three year cycle and then all of them after
16 to see if there was a difference. And there
17 is a statistical difference in the
18 compliance rates. It definitely -- the
19 compliance rates are going up, non-
20 compliance is going down. I mean, I can
21 show it statistically. We -- we've taken
22 out variables like the site had a release or
23 the site -- all kinds of different
24 variables, just to make sure we were looking
25 specifically at the inspection rate. And

1 the inspection rate is definitely increasing
2 compliance in Louisiana.

3 If you want, I can give you the
4 numbers. I'll do that later. But the
5 person I'm working with is working on
6 publishing that paper now in some economic
7 journals and we've given this talk at a
8 couple different conferences and webinars at
9 the regulated community. So it's definitely
10 a -- a -- definitely more compliance now
11 than in the past.

12 And in addition to that, just looking
13 at our number of expedited penalty issue,
14 when we started that three year inspection
15 cycle, a lot of people weren't getting
16 inspected frequently. We were issuing
17 somewhere around -- between 160 and 300
18 expedited penalties a year. Since then, the
19 last two, three year cycles, we're running
20 about an average of upper 80's to 90,
21 expedited penalties. So we're issuing a lot
22 less penalties. So people are getting into
23 compliance.

24 And one last thing about -- about the
25 compliance issue is, we do feel like -- some

1 of us in our agency feels like -- we feel
2 like it is a -- basically, hitting the owner
3 twice for the same violation if they are out
4 of compliance. So we will do an inspection
5 at the site. You're out of compliance with
6 a few things. And we issue them an
7 expedited penalty. The max can be \$3,000.
8 And then a month later, they have a release.
9 They get hit for the exact -- the trust fund
10 guys are looking at a years worth of
11 records. They'll see those exact same
12 violations we just penalized them for and
13 penalize them another \$10,000 with their
14 deductible. So they're basically getting
15 penalized twice by an agency for the exact
16 same violation. So we have a fundamental
17 issue with that as well.

18 MR. MILAZZO:

19 So is it a timing -- I mean, it's --
20 so -- so if you waive the \$3,000 and says
21 well -- you know, you do some penalty,
22 right? So I -- I think that our
23 organization took a vote -- correct me if
24 I'm mistaken -- that said it's fair that
25 there's a \$10,000 non-compliance, so called,

1 penalty.

2 MR. HILL:

3 We did.

4 MR. MILAZZO:

5 So my question then would be to the
6 agency, do you feel like you have enough
7 information that you could -- could make a
8 good ruling in every situation, there was
9 compliance, there was non-compliance and --
10 and no fault of the tank owner, or it's a
11 non-compliance issue, or you just discovered
12 that there was non-compliance situation that
13 may or may not have even caused the event?
14 And then how does that play into a penalty
15 phase? So I -- again, I think our
16 association has ruled today, we're okay with
17 that, if you guys could govern non-
18 compliance. So

19 MR. BROUSSARD:

20 Yes. And let me -- let me -- kind of
21 building on what Perry mentioned was our
22 proposal. So if we do compliance
23 inspections at every site that has a
24 release, which is what we're proposing to do
25 in lieu of this substantial non-compliance,

1 what happens in reality is, we're doing the
2 CEI's at these sites every three years. If
3 they get a -- if they're inspected three
4 years ago, inspected now and they get the
5 same violation as three years ago, they will
6 still be eligible for an expedited penalty,
7 maximum \$3,000, but if it's -- within a two
8 year window, they can't get an expedited
9 penalty again. They have to do a full
10 regular penalty which sometimes is anywhere
11 from six -- before the expedited penalty
12 rule came out, it was averaging between six
13 and twenty thousand. So those guys who have
14 releases, they were inspected less than
15 two years ago, if they're in violation of
16 anything, they're not going to be eligible
17 for that lower expedited penalty. They'll
18 get hit with a harder penalty.

19 So we will be doing more enforcement
20 on those in the -- if -- and also, one thing
21 he said that really stuck with me is, no
22 fault of the owner. There's a lot -- a lot
23 of releases, and probably the bulk of them,
24 are equipment failures. Things that the
25 owner has no control over anyway. So he

1 could be in full compliance with everything
2 but he has one month of missing release
3 detection records in the last year, that
4 release was not his fault whatsoever, he's
5 still going to get that \$10,000 non-
6 compliance penalty with the trust fund.

7 So -- so what we're trying to do is,
8 we feel like our compliance enforcement
9 program is robust at this point. We'd like
10 to move that non-compliance penalty stuff
11 out of the trust fund, out of the financial
12 part and bring it in back where it belongs
13 with the compliance and enforcement people.

14 MR. THERIOT:

15 I -- I would note that this all for
16 discussion, because the statute says what it
17 says. We cannot move to any -- make any
18 rules on the non-compliance deductible
19 without a bill in the legislature. So this
20 is preliminary discussions because the non-
21 compliance deductible is statutory and we
22 can't really not -- we have to follow it.
23 So that's not going to go away any time
24 soon. But --

25 MR. MILAZZO:

1 So the interpretation, Perry -- I --
2 I understand that part and I -- I see where
3 you guys are heading. But what kind of
4 freedom, without looking at the statute,
5 what -- what -- what determines non-
6 compliance? I mean, you exercise some
7 authority over that definition. So if so --
8 MR. THERIOT:

9 Yes. The -- the definition is in the
10 statute.

11 MR. MILAZZO:

12 And so that's -- that's --

13 MR. THERIOT:

14 And -- and Jeff's --

15 MR. MILAZZO:

16 -- that's troubling too.

17 MR. THERIOT:

18 -- Jeff's group, when they get -- when
19 they get the first notice and eligibility,
20 they immediately go to our EDMS system and
21 they look at the -- the reports that are in
22 the agency and they make a determination on
23 that definition and they either do or don't
24 impose the deductible amount for non-
25 compliance, which is currently \$10,000.

1 MR. BAKER:

2 Just to give you an idea, over the
3 last three to five years, that percentage of
4 the number of sites that were deemed non-
5 compliant versus compliant range anywhere
6 from 45 to 55 percent. So we have a fair
7 percentage of our eligible sites that are
8 out of compliance.

9 MS. ISAACKS:

10 Now, I do have a question. The way I
11 understand -- and maybe I'm confused, which
12 could be the case. But with the Trust Fund
13 Act -- I'm looking at it. I thought the
14 board, like you said, annually reviewed so
15 they wouldn't be able to make a
16 recommendation?

17 MR. THERIOT:

18 They can relieve the tank owners of
19 their normal deductible.

20 MS. DELAFOSSE:

21 The compliance deductible.

22 MR. THERIOT:

23 That's the one that gets reviewed.

24 MS. ISAACKS:

25 So they can keep non-compliance at ten

1 and --

2 MR. THERIOT:

3 Yes. And it would -- the non-
4 compliant would remain at that.

5 MS. ISAACKS:

6 Okay.

7 MR. THERIOT:

8 But there could be a provision to
9 raise it. For compliant people, they could
10 recommend zero for complaint tanks.

11 MR. BAKER:

12 The board has a responsibility of
13 recommending to the Secretary annually
14 modifications to the deductible compliant or
15 non-compliant.

16 MR. HILL:

17 Can I ask a question? Whenever you --
18 and -- and I appreciate the fact that --
19 that, you know, this organization and there
20 -- where there are situations when somebody
21 absolutely can't pay, they're barely keeping
22 the doors open, but what are the steps and
23 measures -- and I know if I'm in non-
24 compliance and I just say, "I can't pay," I
25 -- I know you've got to do some type of due

1 diligence to see if -- if I really can't pay
2 or -- and -- and I -- I hear some payment
3 options that are going on. Is that
4 something that -- rather than just get it
5 out there that, "Hey, if you can't pay, DEQ
6 will clean it up and move on.

7 MR. THERIOT:

8 Well --

9 MR. HILL:

10 And I think that's what Johnny is
11 referring to because --

12 MR. THERIOT:

13 Well, we have -- we have some other
14 tools --

15 MR. HILL:

16 Yes. Right.

17 MR. THERIOT:

18 -- okay, that Sam will be happy to
19 tell you about. But traditionally,
20 enforcement has not moved to red tag many
21 tanks. For those tanks that have sustained
22 a release where they claim that they don't
23 have enough money, we -- we do have the
24 power after a certain number of days have
25 run to red tag the tanks. Then they can't

1 get anymore fuel. We are looking at that
2 because, you know, we don't have a mechanism
3 other than when we send a compliance order,
4 if people claim they don't have enough
5 money, they're -- we ask them to send us
6 their financial affidavit and their last
7 three sets of tax returns. That's routinely
8 done by our enforcement division. If they
9 comply, we will review them and see what --
10 what options we may have. Many times, they
11 don't reply. And -- and it's difficult to
12 get the attention. And so this has not
13 happened with the larger people. It's
14 always the little small operators.

15 We're also looking at upping
16 enforcement on those people, because there
17 are requirements that when a -- when a --
18 when you detect a release, you're required
19 to investigate the release. You've got to
20 take a few things into regulations. One of
21 which is to submit to the department a plan
22 for investigating and then eventually the
23 recap plan that everybody is familiar with.
24 Those are written into the regs. And we
25 have traditionally not -- because the

1 department is divided into people who do
2 remediation and then the side that does
3 enforcement, the two sides have not always
4 been on the same wavelength. But they are
5 beginning to get there. And one of the
6 things that we're looking at is using the
7 enforcement power to red tag tanks that have
8 not submitted an application for eligibility
9 or investigation or anything else after they
10 have a release.

11 And -- and so having a mechanism in
12 the trust fund that backs up -- if we put a
13 red tag on them because they haven't, then
14 they're out of business. They're not going
15 to be selling any fuel, unless they
16 institute an eligibility determination and
17 show proof of the owner's shape being
18 handled. Long range, we would like to see
19 the enforcement power used and if they can't
20 continue operating, then we get the tanks
21 out and they're removed. I mean, that is --
22 because if they've had a release and they
23 can't clean it up, we would like the trust
24 fund -- they've been paying into it -- to
25 clean it up, but they're not going back into

1 business, which is kinda what ya'll have
2 always expressed in -- in the statutes we've
3 passed, that you don't want people staying
4 in business that won't comply.

5 MR. ST. ROMAIN:

6 And we would lien them for the non-
7 compliance deductible.

8 MR. THERIOT:

9 That's correct.

10 Well -- and -- we'll -- there's lots
11 of options. That's why we're putting it out
12 there. I -- I said at the beginning that
13 there's more than one option available to
14 handle this. We're looking at many of them.
15 And we just wanted to make ya'll familiar
16 with it, because none of this is going to
17 happen immediately and get ya'll's input
18 after you've talked to your membership.

19 MR. BROUSSARD:

20 Before we -- we get off this topic, I
21 just need to express that there are other
22 problems with the financial responsibility
23 regulating besides what we've just talked
24 about. So there are this -- there's like
25 four really big main issues with the

1 financial responsibility regs and the
2 statutes and -- and how we implement it.
3 And the first and probably biggest, which is
4 what brought this conversation up is that
5 the regulations require the owner to have
6 financial responsibility -- a financial
7 responsibility mechanism for that deductible
8 amount. And that's in our regulations.
9 It's in the statues. And it's something we
10 have never been able to enforce. We --
11 we've tried since 2000 on multiple
12 occasions, but we've got basically shot down
13 by our -- our legal guys, we've been shot
14 down by enforcement guys. We've actually
15 tried to clarify the regs a little bit
16 better back in 2004. And actually the trust
17 fund board was against us fixing the
18 regulations to require that. So -- so we
19 have some regulations that are in place that
20 would fix this problem, but it's obvious to
21 us, nobody wants us to enforce those
22 regulations.

23 So what I want to do is remove those
24 from our regulations and come up with a way
25 to get us where we need to go without having

1 to enforce things that you guys just don't
2 want.

3 If we enforce the financial
4 responsibility requirement, you -- all the
5 tank owners would actually have to have a
6 letter of credit or a financial self test or
7 -- or certain worth, basically money that
8 could apply to the deductible in the event
9 that they -- something happens and they have
10 a release. But we can't enforce that. So
11 what we're left with is the -- the cleanup
12 doesn't happen until the deductible is paid.
13 And in cases, it's slowing down our cleanup.
14 So it's a -- it's a multiple -- it's a whole
15 bunch of different things in the -- in the
16 regs and the processes that's leading us to
17 -- we need to make a decision on how we want
18 to proceed and how we want to fix our
19 regulations.

20 So I'm in the process of rewriting our
21 regulations and I have to apply for state
22 program approval. At the time we were
23 approved with our trust fund, our -- we had
24 those regs in place that said a financial
25 responsibility mechanism is required for

1 that deductible amount. But since --
2 through the course of time, that's faded
3 away and we don't enforce that. And our
4 regs have kinda veered off a little bit.
5 But to fix it and to make it work, is
6 something you guys definitely don't want.
7 You -- you expressed that to us before. So
8 we're at a point where we need to address
9 that at some point, because I have to get
10 state program approval again. And this is
11 one of those items that EPA is going to look
12 at and say, "Well, ya'll are" -- "Your regs
13 say this, but you guys don't do that."

14 So in short -- in -- in lieu of having
15 you guys have financial responsibly for the
16 deductible amount, we said let's get away
17 from that, which is -- which is called a
18 partial fund, partial payment fund. The
19 fund pays up to -- what -- you pay your
20 deductible and the fund pays the rest and it
21 doesn't start until you pay your deductible.
22 Let's switch it to a first pay. Whereas,
23 we'll start covering right away when a
24 release happens, but we can't do that with
25 that deductible amount. We've talked about

1 different -- let's maybe do a cost recovery
2 for the deductible amount. The agency
3 doesn't like that approach and doesn't want
4 to go that direction. So we -- in order to
5 go to first pay and start cleaning up sites
6 when a release happens with the trust fund,
7 we have to figure out what to do with those
8 deductibles and how to -- how to put them
9 into place so that we can start cleanup and
10 still have it. So for me, the obvious thing
11 with the non-compliance was to get rid of it
12 because we have a very robust compliance
13 (inaudible) program now that I think far
14 surpasses and it's showing that we're
15 getting much better compliance with what
16 we're doing than with that extra deductible
17 thing is.

18 So -- so when you -- when you look at
19 the whole picture, it makes a little bit
20 more sense of why we're asking for this.
21 It's not just to go to zero or -- or to get
22 rid of that statute, it's to address a whole
23 bunch of problems with our regulations and -
24 - and our process and how our current
25 process doesn't follow our regs and that

1 statute.

2 MR. MILAZZO:

3 So, Sam, again, I go back to an action
4 that was already taken on behalf of the
5 association. I think the message -- and I
6 wasn't there -- but what has been said to me
7 in preparations for these meetings is, the
8 message was loud and clear, \$10,000 non-
9 compliance. If you guys are comfortable
10 being the judge and jury that it was non-
11 compliance and it should have a -- a
12 deductible component to it, then I -- and --
13 and would trust that, then I think the
14 association is -- is happy with that.

15 I would say what's troubling to me --
16 if I really -- and I do believe that
17 consequences are necessary -- is that I hear
18 you loud and clear that -- that according to
19 the statute or the regulation, as is
20 written, you've got a problem, because until
21 the deductible is paid, we can't take action
22 environmentally. My suggestion would be to
23 cleanup the regulation to say -- is it fair
24 to assume that these places are still open
25 while there's some cleanup or action being

1 taken for the most part?

2 MR. BROUSSARD:

3 It's a mix match.

4 MR. MILAZZO:

5 Okay. So I'd say red tag and you're
6 out of business until this deductible is met
7 and we get on with our action here. I think
8 that's what is being said today by this
9 association.

10 MR. BROUSSARD:

11 It -- it is and what --

12 MR. MILAZZO:

13 Is that fair to say?

14 MR. BROUSSARD:

15 The -- the only drawback -- the only
16 drawback to that is, okay, we red tag them.
17 The owner says, "You know, what? That's
18 fine, I'm going to go out of business. I'm
19 not" -- "I'm still not going to pay the
20 deductible." He goes out of business. Then
21 what we're left with is, we can't get that
22 deductible paid until we go through the
23 legal process and put a lien on that
24 property to pay the deductible. And in the
25 interim, that release is not being

1 addressed. So as long as we have that,
2 we'll still not be able -- able to clean
3 that site until we run through those
4 processes. And it -- it could -- and it
5 will lead to sites where we're not cleaning.

6 MR. HILL:

7 So you're trying to take steps to --
8 to speed that process up, Sam, is that what
9 you say you're working on?

10 MR. BROUSSARD:

11 Yes. I think it -- what we're
12 proposing would speed it up tremendously.
13 It -- it would actually -- we would have no
14 impediment to start using the trust fund
15 money to cleanup a contaminated site. If
16 there's -- if there's no deductible for
17 anyone, we still go do our compliance
18 inspection on a release. The guy still gets
19 a penalty from us for being out of
20 compliance at the time of that release and
21 the site will start getting cleaned up right
22 away.

23 MR. HILL:

24 Right away.

25 MR. MILAZZO:

1 What if you -- what if you, just two
2 years later --

3 MR. BROUSSARD:

4 Pardon?

5 MR. MILAZZO:

6 What if two years later he hasn't paid
7 the deductible or the penalty?

8 MR. BROUSSARD:

9 Well, we have -- we -- we have an
10 enforcement process and a legal -- legal
11 methods for --

12 MR. BAKER:

13 Well also, don't forget that something
14 was added in the last statutes that says,
15 once the department has sent a letter to the
16 owner, the responsible party, telling them
17 that they are -- that they have an incident,
18 that they need to go ahead and do an
19 assessment, they have two years within --
20 from receipt of that letter to initiate that
21 assessment. If they don't, they're no
22 longer trust fund eligible.

23 MR. MILAZZO:

24 And that's been very successful,
25 right?

1 MR. BAKER:

2 It's just implemented.

3 MR. MILAZZO:

4 Okay.

5 MR. BAKER:

6 So we really are not -- haven't been
7 able to implement it yet.

8 MR. ST. ROMAIN:

9 Which still doesn't help -- it doesn't
10 help with the site being cleaned up.

11 MR. HILL:

12 We have a question from --

13 MR. ST. ROMAIN:

14 If he's not paying his deductible,
15 he's surely not going to pay --

16 (UNIDENTIFIED SPEAKER)

17 (Inaudible), I'm the (inaudible)
18 advisor to the Secretary. I understand you
19 have an issue with the deductible and I also
20 understand there's got to be some
21 disincentive for non-compliance, but the
22 real issue is, if somebody is unable to pay
23 a deductible and God forbid that source
24 contaminates geo-aquifer and goes through
25 affecting folks drinking water, we are in a

1 veracious position to try to justify that we
2 did not take any action because we're
3 waiting for that person to pay his \$5,000 or
4 \$10,000 deductible. That's really the
5 issue. That's the issue that does confront
6 us.

7 MR. HILL:

8 I agree.

9 (UNIDENTIFIED SPEAKER)

10 So that's what owner's don't consider,
11 that -- like Perry said, our job is to make
12 sure of the cleanup. But also understand,
13 it has to be this disincentive to people
14 that are not in compliance. But the bigger
15 issue is, protection of public. So it's
16 going to be a PR disaster if that incident
17 happens.

18 I don't know what's in the universe,
19 but we've got some facilities, we don't even
20 know whether or not their meeting, whether
21 or not they impacting groundwater. That's
22 the main issue that would be debated.

23 Thank you, Mr. Chairman.

24 MR. HILL:

25 Thank you. Good point.

1 MR. ST. ROMAIN:

2 But you're making them non-eligible
3 after two years. That makes that even
4 worse.

5 MR. HILL:

6 Yes.

7 MR. ST. ROMAIN:

8 Then there's no fund to clean them up.

9 MR. BAKER:

10 Well, but then there's other
11 mechanisms to --

12 MR. MILAZZO:

13 My point of red tagging someone that's
14 in non-compliance, that -- that really has
15 just disregarded responsibility, okay, for
16 now, we're going to -- immediately begin to
17 cleanup. Because we totally agree. We're
18 here to support environmental cleanup.

19 MR. HILL:

20 We are. We are.

21 MR. MILAZZO:

22 And we take that at heart, that
23 responsibility. We all have. And I think
24 the message we're trying to deliver is,
25 we're trying to help reinforce that to a lot

1 folks that are out there who may have maybe
2 a different opinion of what their levels of
3 responsibility should be.

4 But I would say maybe we, you know,
5 vote to table this, because there's an
6 action already taken by the executive
7 committee, perhaps the board, and this is
8 probably a shift. And I would say, you
9 know, for them to get some --

10 MR. HILL:

11 Feedback.

12 MR. MILAZZO:

13 -- discussion. Perhaps, we could ask
14 Sam to do another presentation and so that
15 the board could buy-in, because this is
16 going in a somewhat different direction.

17 MR. BROUSSARD:

18 Yes. And we -- we understand that.
19 It -- it is a total shift from our normal
20 process and we would be glad to present our
21 information, do whatever we can to ease your
22 minds. And we'll work on those.

23 MR. HILL:

24 What do we need to do as an
25 organization, Sam, to -- what do we need to

1 do at this point? Wait until you finish
2 what you're working on now to --

3 MR. BROUSSARD:

4 No. My -- my -- basically, I have a
5 deadline to get my -- my UST reg revision
6 done. And I have to have them finalized
7 before I apply for state program approval by
8 October 13th of 2018. So I'm looking at
9 probably having to have a final rule by July
10 of 2018, which means that I still have to
11 get my draft rule all together, which it's
12 basically all together except I've been
13 hanging on to this last piece to see if I
14 could roll it in. I've got to get EPA to
15 review my draft rule and make sure it meets
16 state program approval. If it does, then I
17 can start my final rulemaking process. So I
18 -- I could do some of it. I could -- I
19 could either fix the financial
20 responsibility part by saying you guys got
21 to have it or I can take it out. But some
22 kind of way, I've got to -- if I take it
23 out, they're gonna question, why are you
24 taking it out, out of the process? So it's
25 a big red flag to them. That's why it -- it

1 does need -- I would prefer it gets
2 addressed before I send my draft rule to the
3 EPA to look at whether or not it meets state
4 program approval, before I finalize it.

5 MR. ST. ROMAIN:

6 Perry, is there a way that the rule
7 can be written that the work could get
8 started immediately, even though they --
9 they still owe the state \$10,000?

10 MR. THERIOT:

11 There -- there's different proposals
12 that -- there's lots of difference. The
13 federal rule --

14 MR. ST. ROMAIN:

15 Right now, we can't start until the
16 \$10,000 is paid.

17 MR. THERIOT:

18 The -- the determination of
19 eligibility is defined when you look in the
20 statute. The statute says to be an eligible
21 participant, you have to have met the
22 owner's responsibility. That's in the
23 statute. And that's why -- that's -- some
24 of the ones getting on the list that haven't
25 paid, they're currently not eligible. And

1 if they're out of operation and not
2 eligible, they would normally be eligible
3 for the abandoned tank program, except
4 they're still in business and that -- that
5 disqualifies them from the abandon tank
6 program, if they're still in business.

7 MR. HILL:

8 And should.

9 MR. THERIOT:

10 And -- and so they -- they get stuck
11 into the area where they're not paying the
12 deductible, which makes them ineligible but
13 they're still in business so they're
14 ineligible for the abandoned, which means
15 there's no funds available to actually go in
16 and address the leak.

17 Now, the -- the lien provision won't
18 help us either because the lien provision
19 only can be operated by a station that's no
20 longer -- you can't use it on an operating
21 station. So we -- we're kind of hamstrung
22 on all those stations where people claim
23 they can't pay the deductible but they're
24 still buying and selling gas. Except for --

25 MR. ST. ROMAIN:

1 Red tag.

2 MR. THERIOT:

3 -- red tag. Okay. We -- we -- that's
4 the only ace in the hole that we can use to
5 enforce that would be a red tag.

6 MR. ST. ROMAIN:

7 Red tag them or set them up with a
8 payment plan like the -- the --

9 MR. THERIOT:

10 Well, and that -- that's one of the
11 possibilities that have been discussed.

12 MR. HILL:

13 But then you've got to wonder if
14 they're out of compliance, you know, is it -
15 -

16 MS. DELAFOSSE:

17 It depends on why they're out of
18 compliance.

19 MR. HILL:

20 Yes. Why they're out of compliance.
21 I understand that. As to whether --

22 MR. THERIOT:

23 Well, it could be -- like Jeff said,
24 40 to 50 percent.

25 MR. HILL:

1 Yes.

2 MR. BROUSSARD:

3 But, wait. Let me -- let me clarify
4 that. That 40 to 50 percent that Jeff's
5 talking about is 100 percent compliant.

6 MR. HILL:

7 Okay.

8 MR. BROUSSARD:

9 They could have a missing month of
10 paperwork and they're out of compliance for
11 the trust fund. This is not a site not
12 doing release -- not doing release detection
13 at all weighs the same to these guys as a
14 missing a month of paperwork.

15 MR. HILL:

16 True. Yes.

17 MR. BROUSSARD:

18 So that noncompliance you're throwing
19 out, with the way you guys do it, it's all
20 across the board and it's -- it -- some --
21 most of the time, it doesn't have anything
22 to do with that leak or finding that leak or
23 addressing it quick.

24 MR. HILL:

25 Well, it's just like every now and

1 then, we forget to pay one site underground
2 tank for whatever reason.

3 MS. DELAFOSSE:

4 Sure.

5 MR. HILL:

6 It got lost in the mail or you didn't
7 send it to us, but you don't red tag me, you
8 just let me know in some fashion that we
9 didn't pay it.

10 MR. THERIOT:

11 Well, one of the things that Sam
12 hasn't mentioned is the federal rule. The
13 CFR's which set up the conditions for
14 program approval do require that owner's
15 have first dollar coverage. That's in the
16 federal law. Now, they have traditionally
17 approved states throughout the country that
18 have this owner's responsibly amount. I
19 can't read EPA's mind, but I suspect they
20 allow the states to do that because every
21 insurance company in the private business
22 tells you, you've got a deductible. And so
23 while they -- they couldn't turn around and
24 tell a state fund, look, you can't have this
25 owner's responsibility because you've got to

1 have first dollar coverage, without telling
2 all the insurers of the country that same
3 thing, you can't have a deductible, you have
4 to have zero deductible.

5 I'm just guessing because I wasn't
6 around when the CFR's were -- were
7 presented, but I would say that it's likely
8 why a lot of states that have deductible
9 amounts were approved, was that type of
10 thinking.

11 There's no guarantee they'll keep that
12 thinking.

13 MR. HILL:

14 Right.

15 MR. THERIOT:

16 Because with new -- everybody has to
17 rewrite with the new regulations that they
18 just put out last year. And like Sam told
19 you, there's a deadline on them, on putting
20 them together. I believe, Sam, they still
21 do require first dollar coverage?

22 MR. BROUSSARD:

23 They -- they don't -- they -- you can
24 go either or. You can go either first
25 dollar coverage or you could go partial

1 coverage. But the partial coverage, if the
2 owner has to pay the deductible, they have
3 to have responsible -- financial
4 responsibility for that deductible amount.
5 You have to have some money in the bank to
6 pay for it or a letter of credit or a
7 standby trust fund, something that you could
8 put up right when you have a release to pay
9 that deductible. And that's the part we're
10 lack -- we're missing.

11 MR. HILL:

12 We're missing that.

13 MR. BROUSSARD:

14 It's in our regs that we can enforce
15 it, so that's why we're -- that's why we're
16 not meeting the requirement of the federal
17 regs with our program currently.

18 MR. HILL:

19 Theresa wanted --

20 MR. BROUSSARD:

21 So what -- and here -- here's what --
22 and then to compound it, the regs also say,
23 if you -- if you don't have financial -- if
24 you don't have your financial
25 responsibility, you can't pay for your leak,

1 we're required to notify the owner. And
2 they're suppose to go and get another
3 mechanism. But the way we do it in
4 Louisiana, they don't know they're eligible
5 until after the leak happens. So if they
6 can't pay it, we tell them they have to go
7 get another method for financial
8 responsibility. They can't get it because
9 they already have a leak. So it's --
10 they're stuck. And what ends up happening,
11 they close down and we're stuck with it and
12 we end up cleaning it with abandon tank.

13 MR. HILL:

14 End up cleaning it up anyway.

15 MR. BROUSSARD:

16 Or not cleaning it.

17 MR. HILL:

18 Yes.

19 Theresa would like to say something.

20 MS. DELAFOSSE:

21 I was just going to add that if we did
22 -- or if the board, you know, ultimately
23 decided that a zero dollar noncompliance and
24 compliance deductible is what they wanted to
25 move forward with and Dr. Brown agreed, you

1 know, legislation would be necessary,
2 because it is in the statute, like Perry
3 said. So that's something we'd have to
4 address in the future. Not likely this
5 session, upcoming, but next year.

6 MR. BAKER:

7 For the noncompliance only.

8 MS. DELAFOSSE:

9 Yes.

10 MR. BAKER:

11 And the compliance deductible can be
12 set --

13 MS. DELAFOSSE:

14 Yes. That's what I meant.

15 MR. BAKER:

16 -- to zero and no language change
17 would be needed -- would be required.

18 MS. DELAFOSSE:

19 Right.

20 MR. HILL:

21 It doesn't have to go through
22 legislature?

23 MS. ISAACKS:

24 Even if noncompliance stays the same -
25 -

1 MS. DELAFOSSE:

2 Yes.

3 MS. ISAACKS:

4 -- as --

5 MR. THERIOT:

6 Yes. And that's -- that's -- we could
7 go -- if you were compliant, we could go --
8 this board could recommend a zero deductible
9 for compliant tanks. They can't override
10 the statute for noncompliant tanks.

11 MR. HILL:

12 Right.

13 MS. DELAFOSSE:

14 And -- and until a statute change was,
15 you know, handled and signed by the Governor
16 and all of those good thing and then regs
17 would follow, we discussed some different
18 work-arounds as a group. So I don't know
19 what -- what we decided would be the best
20 option there, but there could be some
21 potential to either bill them for the
22 deductible or do payment plans and things of
23 that nature so we can actually begin
24 cleaning up those sites instead of sitting
25 there waiting for them to collect them.

1 MR. HILL:

2 Well, obviously, our board is in favor
3 if you're in compliance to go to zero
4 deductible.

5 MR. ST. ROMAIN:

6 One more question, Sam. Does -- when
7 there's a release, does it trigger an
8 automatic inspection?

9 MR. BROUSSARD:

10 Today, no, not a full compliance
11 inspection. But we -- we respond to the
12 incident. So --

13 MR. ST. ROMAIN:

14 Well, what if it did? And if there
15 were any noncompliance issues at that point,
16 you could fine them for their inspection,
17 maybe up to the \$10,000.

18 MR. FULTON:

19 Yes. That's what we're proposing.

20 MS. DELAFOSSE:

21 That's what we proposed.

22 MR. BROUSSARD:

23 Yes. That's what we're proposing. We
24 do a full compliance inspection the day that
25 incident hits our desk and -- and any --

1 MR. ST. ROMAIN:

2 Where there's still the punitive --
3 the -- you know, the punitive charges for
4 being noncompliant. But it just -- it's not
5 attached to the cleanup portion. It's
6 attached to being noncompliant.

7 MS. DELAFOSSE:

8 Exactly.

9 MR. BROUSSARD:

10 Exactly. That's what we're trying to
11 -- to do is move the compliant -- move that
12 noncompliance determination into the
13 compliance and enforcement section and not
14 the trust fund section.

15 And look, it -- it was a great idea --
16 and I'll be the first to admit it was a
17 great idea back in 2005 when you guys came
18 up with it because we were not doing
19 compliance inspections. And that was a way
20 to get compliant. But we are in a
21 different climate now. It's a different
22 atmosphere. We're doing a lot more
23 inspections and we're doing a lot of -- a
24 lot more penalties. So it -- it is a
25 different time today than it was back on

1 '05.

2 MR. ST. ROMAIN:

3 So I guess the only issue with that
4 way would be where would the flow of money
5 go? Right now, it goes to reimburse the
6 fund if there was a fine for being
7 noncompliant.

8 MR. BROUSSARD:

9 The penalty -- the penalty money goes
10 where?

11 MS. DELAFOSSE:

12 Goes into the Hazardous Waste Site
13 Cleanup Fund.

14 MR. THERIOT:

15 Yes. Right.

16 MR. ST. ROMAIN:

17 So the Motor Fuel Trust Fund would be
18 on the hook for a larger portion?

19 MR. BROUSSARD:

20 Yes. And, I mean, I have those
21 numbers. I roughly ran them. And based on
22 some information I got from the trust fund
23 guys, it really wasn't that much.

24 Jeff, you may have it?

25 MR. THERIOT:

1 Yes. It's minuscule compared to the
2 amount that comes in and out.

3 MR. BROUSSARD:

4 It -- it is a very small amount.

5 MS. DELAFOSSE:

6 It's no more than a half a million
7 dollars.

8 MR. BROUSSARD:

9 So what I -- what I have here is that
10 with the extra \$5,000 you would get for
11 noncompliance in 2016, it amounted to
12 \$35,000. 2015, \$105,000. 2014, \$115,000.
13 And 2013, 100,000. So we're not talking
14 about an absorbent amount of money.

15 MR. MILAZZO:

16 That is the compliance --

17 MR. BROUSSARD:

18 That's the noncompliance -- that's the
19 extra \$5,000 --

20 MR. MILAZZO:

21 Okay.

22 MR. BROUSSARD:

23 -- based on the -- that's the extra
24 five. And you would double it if you went
25 to zero.

1 MR. BRIGHT:

2 Sam, would there be any issues with
3 getting the inspections done, with personnel
4 numbers, things like that? I mean, do you
5 feel like you could cover them? I mean, I
6 know there's not that many incidents that
7 occur.

8 MR. BROUSSARD:

9 We -- we -- we're -- we're confident -
10 - and I would not have proposed it if I
11 would've felt there was a staffing issue.
12 We -- we do inspections every three years at
13 every site. We do contract half of them,
14 but these would not be done by contractors.
15 These would be done by our staff. And
16 basically what we -- we would basically just
17 take -- instead of doing it when it's due,
18 we'd do it then. And then that just rolls
19 the three year date over so it doesn't make
20 any difference in --

21 MR. BRIGHT:

22 Okay. So you're not doing it twice in
23 the same --

24 MR. BROUSSARD:

25 We're not doing it twice.

1 MR. BRIGHT:

2 All right.

3 MR. BROUSSARD:

4 Unless -- unless we did it two months
5 ago, then we'd do it now. It would've been
6 done a lot sooner, but we'll still -- we'll
7 still basically be the same.

8 MR. McCARTY:

9 I've got a question. That -- but
10 that's -- you're talking about active sites?
11 I mean, there's different sites that we --
12 that become a release and we -- we have to
13 go into a cleanup. So --

14 MR. BROUSSARD:

15 It would be active or -- active or
16 temporary closed.

17 MR. McCARTY:

18 An inactive site that was a tank
19 closure or something that's been sitting
20 there for a while, a phase two, now, you
21 wouldn't do an inspection on those if
22 there's not any activity?

23 MR. BROUSSARD:

24 I think I would send you to every one,
25 Greg, whether you wanted to go or not.

1 So yes, if it's a closure, you know,
2 obviously we're not doing compliance
3 inspections because their tank system is --
4 MR. McCARTY:

5 Right. I just wanted to bring that
6 out, because it's not like every one --

7 MR. BROUSSARD:

8 If they had a tank system in place,
9 regardless of their status, we would expect
10 it to be in full compliance.

11 MR. HILL:

12 I think -- could I hear a motion for
13 us to vote on the zero deductible for -- if
14 you're in compliance?

15 MR. THERIOT:

16 I think it would be more proper --
17 you're required statutorily to do that, but
18 I don't know that we had that on our agenda
19 notice.

20 MR. HILL:

21 Okay.

22 MR. THERIOT:

23 So it wouldn't be proper to do it
24 today. This was suppose to be the opening
25 of a discussion.

1 MR. HILL:

2 Okay.

3 MR. THERIOT:

4 But once a year, this board meets and
5 makes such a recommendation.

6 MR. ISAACKS:

7 If I could just draw your attention in
8 the minutes, though. We brought it up last
9 time.

10 MR. HILL:

11 Yes. I do --

12 MS. ISAACKS:

13 And you said it would be on the agenda
14 this time for discussion. And had we known
15 this, we've had a board meeting or two since
16 this last meeting and we could've, you know,
17 brought it up. So I don't know -- but we've
18 had --

19 MS. DELAFOSSE:

20 Perry, is that a fiscal year thing
21 where the zero would start July 1?

22 MR. THERIOT:

23 Yes.

24 MS. DELAFOSSE:

25 I would believe so, yes.

1 MR. THERIOT:

2 Yes.

3 MS. DELAFOSSE:

4 So would the May meeting be too late
5 to accomplish that for July 1, '17?

6 MR. THERIOT:

7 No. May -- May meeting would be fine.

8 MS. DELAFOSSE:

9 Okay.

10 MR. HILL:

11 So we'll just make a point --

12 MR. ST. ROMAIN:

13 So whether we voted today or in May,
14 it still would be July 1?

15 MR. THERIOT:

16 It would still be July 1st, yes --

17 MS. DELAFOSSE:

18 Yes. Yes.

19 MR. THERIOT:

20 -- because it's fiscal year based.

21 MR. HILL:

22 So you think we need to put it on the
23 agenda for the next meeting, Perry, to vote
24 on it?

25 MR. THERIOT:

1 Yes.

2 MR. HILL:

3 Okay.

4 MR. THERIOT:

5 A vote on the recommendation for
6 deductibles, which this -- this board does
7 once every year.

8 MR. HILL:

9 And -- and table what Sam has been
10 discussing with us until he gets further
11 along or --

12 MR. THERIOT:

13 Well, if -- if ya'll --

14 MR. HILL:

15 And we go back to our board?

16 MR. THERIOT:

17 The way I -- yes. I would -- the way
18 I would go, if you're going to go back to
19 your membership, setting the compliance, the
20 -- the regular deductible is within the
21 recommendations this board has to do every
22 year. The noncompliant deductible will
23 require statute change and will require
24 board buy-in, because that -- we're realist
25 around here. If we don't have your guy's

1 buy-in, it's going to be very difficult to
2 get it changed through the legislature.

3 MR. HILL:

4 Right.

5 MR. THERIOT:

6 So that is a long range goal because
7 it would require legislation. But it would
8 require board buy-in, in order for us to
9 prepare a bill, get it ready, get it through
10 -- we usually share it with the board
11 members. And if everybody's on board, then
12 present it to the committee as a legislative
13 that everybody agrees on.

14 So I don't feel that we would get that
15 done immediately.

16 MR. HILL:

17 Right.

18 MR. THERIOT:

19 But it -- but it -- but it -- the
20 other side of it on the regular deductible,
21 that has to be done every year.

22 MR. HILL:

23 Okay. Well, we'll just try to put it
24 on the agenda for the next meeting, which
25 will be when? May?

1 MR. DELAFOSSE:

2 May 18th.

3 MR. HILL:

4 Is there any other legislation coming
5 about related to DEQ that ya'll are aware of
6 that may be coming up this session?

7 MR. THERIOT:

8 We haven't heard of any.

9 MR. HILL:

10 Haven't heard of any.

11 MR. THERIOT:

12 That doesn't mean it doesn't exist.

13 MR. HILL:

14 Right.

15 MS. DELAFOSSE:

16 No. True.

17 MR. HILL:

18 That's true.

19 MR. THERIOT:

20 I think this past fiscal session had
21 some DEQ stuff in it, but I don't believe it
22 involved this fund.

23 MS. DELAFOSSE:

24 It did not. No cuts to the fund.

25 MR. HILL:

1 Does anybody have any other questions
2 related to what Sam has been discussing as
3 far as compliance and noncompliance issues?

4 MS. HADWIN:

5 I just want to say that when you
6 consider this, you know, you do have a -- a
7 way to put a lien on our property if we
8 don't pay the deductible. Like was said, it
9 has to go through our enforcement process,
10 which, you know, with any kind of legal
11 process, it takes time. So that whole time
12 that we're not cleaning it up, the release
13 could be spreading into the -- actually, in
14 the long run would cost more money to the
15 fund than it did if started cleanup right
16 after the release happened.

17 MR. MILAZZO:

18 Well, let me -- just to make sure my
19 comments were clear, I'm in absolute favor
20 of that. I think you guys need to, you
21 know, execute a cleanup plan as quick as you
22 know what is the proper course of action.
23 My only response is that what can we do to
24 make sure that there are some consequences?
25 And I'm only saying that because that's what

1 the board of Louisiana Oil Marketers said.
2 And if that means red tagging them, they're
3 no longer operational, they can't create any
4 further damage while you're underway and
5 then when they meet the deductible, they're
6 back in business. They generally find the
7 money when -- when you can't go any further.

8 So I want to be very careful. I don't
9 want to over, you know, state my position.
10 I just want to reassure you that this group
11 is very sensitive to what this is all about.
12 And we're here to help you find a path
13 forward that gets you to do the work we all
14 want you to do. This was created for us at
15 the end of the day. And we thank you for
16 being very sensitive. And if there's a way
17 to lower deductibles and less -- you know,
18 less out of pocket, because we're paying
19 along the way, quite frankly, I think that's
20 wonderful. And where the statute needs to
21 go through some changes to do that, we're in
22 full support of that. I just go back to an
23 action that was taken that requires some
24 consequences but that doesn't impede your
25 ability to immediately begin your course of

1 action. And so I am in full support of
2 that.

3 MS. HADWIN:

4 Another situation where we have a lot
5 of sites that fall into this category is,
6 they can't pay their deductibles, can't
7 (inaudible) whether they walk away, well
8 they can't be eligible unless the owner
9 signs the application. So there's no way we
10 can sign the application then. It's kinda
11 been a weird --

12 MR. MILAZZO:

13 I think there's a lot of sensitivity
14 in the -- in the changes that are required
15 as the statute is written today that allow
16 you some additional flexibility. And again,
17 that's why I would suggest tabling it. And
18 -- and I think it's -- you know, there's a
19 lot to talk about. And I think to the
20 leadership team at Louisiana Oil Marketers
21 kinda work through that process.

22 MR. HILL:

23 Any other further discussions or
24 questions?

25 (No response.)

1 MR. HILL:

2 If not, do I hear a motion to close
3 the meeting?

4 MR. ST. ROMAIN:

5 Motion.

6 MR. MILAZZO:

7 Second.

8 MR. HILL:

9 All in favor.

10 (All indicated yes.)

11 MR. HILL:

12 Thank ya'll.

13 **THE MEETING ADJOURNED AT 1:12 P.M.**

14 * * * * *

