

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 \* \* \* \* \*



