

ORIGINAL

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 1:10 p.m., on June 24, 2015.

BEFORE:

Lori B. Overland
Certified Court Reporter
In and For the State of
Louisiana

ASSOCIATED REPORTERS, INC.
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DEPARTMENT OF ENVIRONMENTAL QUALITY

A P P E A R A N C E S

Steve Burnham
Chairman

Durwood Franklin
Jeff Baker
Gary Fulton
Shawn Ivey
Karyn Andrews
Cy Morin
Natalie Isaacks
Frank Marcello
Perry Theriot

Melissa Vizinat
Jason Efferson
Ian Kelley
Samuel Broussard
Ted Broyles
Heather Pettus

* * * * *

I N D E X

EXAMINATION:

PAGE (S) :

None

EXHIBITS:

None

REPORTER'S PAGE

54

REPORTER'S CERTIFICATE

55

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DEPARTMENT OF ENVIRONMENTAL QUALITY

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1 MR. BURNHAM:

2 Okay. We'll go ahead and call our
3 meeting to order. I'll be standing in for
4 Johnny Milazzo today, who's absent. I
5 appreciate all of ya'll coming. I'm not
6 sure if I need a motion to call the meeting
7 to order or not? But do I hear a motion to
8 call the meeting to order?

9 MR. IVEY:

10 Motion to call the meeting to order.

11 MR. FULTON:

12 Second.

13 MR. BURNHAM:

14 Thank you. With that, we'll proceed
15 with our roll call.

16 MS. VIZINAT:

17 Melissa Vizinat, Trust Fund.

18 MR. MORIN:

19 Cy Morin, DEQ Audit.

20 MS. ANDREWS:

21 Karyn Andrews, Financial Services,
22 DEQ.

23 MS. ISAACKS:

24 Natalie Isaacks, Louisiana Oil
25 Marketers, proxy for Kerry Hill.

1 MR. MARCELLO:

2 Frank Marcello, Marcello Distributors,
3 Louisiana Oil Marketers. It's a convenience
4 store association.

5 MR. BURNHAM:

6 Steve Burnham with Engineering
7 Associates.

8 MR. IVEY:

9 Shawn Ivey, PPM Consultants.

10 MR. FULTON:

11 Gary Fulton, DEQ USTRD Administrator.

12 MR. BAKER:

13 Jeff Baker, DEQ Motor Fuel Trust Fund.

14 MR. FRANKLIN:

15 Durwood Franklin, DEQ Trust Fund.

16 MR. THERIOT:

17 Perry Theriot, DEQ Legal.

18 MR. KELLY:

19 Ian Kelly, DEQ Trust Fund.

20 MR. EFFERSON:

21 Jason Efferson, DEQ Trust Fund.

22 MS. PRUETT:

23 Heather Pruett, SEMS.

24 MR. BROUSSARD:

25 Samuel Broussard, USTR Division.

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1 MR. BROYLES:

2 Ted Broyles. I'm an attorney with the
3 DEQ Legal Division.

4 MS. CARTER:

5 Jill Carter, DEQ Legal.

6 (Inaudible)

7 MR. MCNEELY:

8 Chance McNeely, DEQ Office of
9 Environmental Compliance.

10 Ms. Norman:

11 Alexis Norman, law clerk, DEQ.

12 MR. GUICE:

13 Steven Guice, law clerk, DEQ.

14 MR. BURNHAM:

15 Thank you. Our next item is the
16 financial services report. Karen?

17 MS. ANDREWS:

18 Thank you. Start on tab three. So at
19 the beginning of the year, we transferred
20 into the trust fund \$70,252,211. As of
21 March 31st, 2015, we have deposited
22 \$16,205,659. And we've paid out
23 reimbursements of \$7,041,015. Current
24 liabilities on sites, \$72,636,637.

25 You'll also note that this year during

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1 legislative process, there was a cash sweep
2 and it reduced our cash balance by
3 \$1,182,856. This is per Louisiana Revised
4 Statute 39:7562.b. And that was due to a
5 budget deficit. And so there was a cash
6 reduction. We now have a balance, after
7 obligations, \$5,597,362.

8 Go ahead and turn the page. Okay.
9 This is an information report for the
10 interest revenue from the trust fund. This
11 is interest revenue collected since
12 inception to date. It equals \$6,655,442.
13 Expenditures total, \$1,229,930. And there
14 have been no expenditures in fiscal year
15 2015.

16 Go ahead and turn the page. This
17 report details how we calculate the amount
18 transferred from the Motor Fuel Trust Fund
19 to the Environmental Trust Fund. And this
20 details our revenues and expenditures. And
21 on this page, we're estimating that in
22 fiscal year 2015, reimbursements to the
23 Environmental Trust Fund are going to be
24 \$6,235,421. And this is primarily
25 attributable to direct department salaries

1 related benefits. And we did have an
2 increase of legal fees paid to the attorney
3 general's office. That will be also
4 directly deposited back to the Motor Fuel
5 Trust Fund at the end of this year. And we
6 can go into that further later, if you'd
7 like to discuss that.

8 Do you guys have any questions?

9 MR. IVEY:

10 What was the -- what was the sweep of
11 the money for? Say that one more time.

12 MS. ANDREWS:

13 Okay. So during the -- there was a
14 mid-year deficit. It's what they call a --
15 a voidance of a budget deficit. And the
16 governor did an interim budget balancing.
17 This was the end of February. And they --
18 they -- they do through the revenue
19 estimating committee and if we go back to --
20 to Revised Statute 39:75c, "Upon receiving
21 notification that a projected budget deficit
22 exists, the governor shall have interim
23 budget balancing powers to adjust the budget
24 in accordance with the following provisions.
25 And in accordance with Article 7 Section 10f

1 of the Constitution, the governor may direct
2 the commissioner of administration to reduce
3 any appropriation or allocation for the
4 executive branch of state government from
5 the state general fund and dedicated funds
6 including any which are constitutionally
7 protected or mandated by an amount not to
8 exceed five percent in the aggregate of the
9 total amount appropriated or allocated from
10 that fund for that fiscal year."

11 In effect what occurred was, during
12 the -- this -- the reduction, they looked at
13 the amount that we were budgeted and reduced
14 our cash by five percent. Which was allowed
15 in this statute. And they --

16 MR. IVEY:

17 The amount that DEQ was budgeted?

18 MS. ANDREWS:

19 Yes.

20 MR. BURNHAM:

21 For the fiscal year?

22 MS. ANDREWS:

23 Yes.

24 MR. BURNHAM:

25 Has that ever occurred before, to your

1 knowledge?

2 MS. ANDREWS:

3 Never. It has never occurred before,
4 in this fund.

5 MS. ISAACKS:

6 And --

7 MS. ANDREWS:

8 We have -- we had did everything
9 within our power to fight, as you know,
10 sweeping of this fund and every other fund.
11 This one especially. And --

12 MR. MARCELLO:

13 I -- I respectfully beg to differ that
14 statement because of the comment, "As you
15 know". And I'm here to tell you, as we
16 know, as far as Louisiana Oil Marketers and
17 Convenience Stores Association is concerned,
18 we did not know this money was being swept.

19 MS. ANDREWS:

20 Well, we were, you know, pretty much
21 given a phone call from the budget office
22 about two weeks before this happened and it
23 was after our meeting, and told that this
24 was going to happen. And I'm, you know --

25 MS. ISAACKS:

1 I guess it was after -- because I was
2 at -- a couple of us were at the committee
3 meeting. And so I'm guessing, from what I
4 understood you said, it was something the
5 governor did. And so was it done -- I guess
6 he has the ability to do it after the
7 committee --

8 MS. ANDREWS:

9 No. It was in that --

10 MS. ISAACKS:

11 -- approved it?

12 MS. ANDREWS:

13 -- it was in that committee meeting.

14 MS. ISAACKS:

15 Okay. Because --

16 MS. ANDREWS:

17 Yes.

18 MS. ISAACKS:

19 -- Todd and I were there.

20 MR. IVEY:

21 Yes. I watched it on video.

22 MS. ISAACKS:

23 And our -- our attorneys were there,
24 yes.

25 MR. IVEY:

1 Yes. I thought it was shutdown in
2 committee.

3 MS. ANDREWS:

4 No. What was shutdown in committee
5 was the -- what they called the revenue
6 opportunity of \$8 million. But the cash,
7 this was not.

8 MR. MARCELLO:

9 Okay. But the question -- one of the
10 questions I have was, you used the term in -
11 - in your paperwork that said it was
12 appropriated or -- what was the other word?
13 I'm not being technical, but I --

14 MS. ANDREWS:

15 No. It's -- it's --

16 MR. MARCELLO:

17 Because this is not an appropriation
18 in my opinion by the state, this budget
19 amount. This is a tax. This is a fee that
20 we -- that we as marketers collect.

21 MS. ANDREWS:

22 So, "the governor may direct the
23 commissioner of administration to reduce any
24 appropriation or allocation for the
25 executive branch of state government from

1 the" -- "from the state general fund and
2 dedicated funds including any which are
3 constitutionally protected or mandated by an
4 amount not to exceed five percent in the
5 aggregate of the total amount appropriated
6 or allocated from that fund for that fiscal
7 year."

8 MR. MARCELLO:

9 So it -- and -- and I'm new to the
10 board and I'm asking --

11 MS. ANDREWS:

12 Well --

13 MR. MARCELLO:

14 -- a simple question as a marketer.
15 This -- I -- I don't -- in my opinion, it's
16 not appropriated or allocated. It's a --
17 it's a tax. It's a fee that we pay into it
18 as -- as directed.

19 MS. ANDREWS:

20 I'm going to have to refer to our --

21 MR. MARCELLO:

22 Yes.

23 MS. ANDREWS:

24 -- attorneys on this. I'm --

25 MR. THERIOT:

1 It is -- all the monies -- even though
2 that it's paid in as a fee, all monies that
3 come to the trust fund are subject to
4 appropriation. We -- we can't use the
5 money, even though it's paid, unless it's
6 been appropriated. The legislature still
7 decides where the money goes, when the money
8 goes. And the governor has limited powers
9 to move money in a deficit situation, which
10 was what this statute was set up for. It
11 was set up for -- to give the governor
12 ability within existing appropriations to
13 move money. And that's what was done. He -
14 - he moved the five percent.

15 MS. ISAACKS:

16 So it was done in -- in that specific
17 meeting?

18 MS. ANDREWS:

19 Yes, it was.

20 MR. BURNHAM:

21 So, Perry, it's your interpretation
22 that the state was within their rights to do
23 it legally?

24 MR. THERIOT:

25 The statute says it. I would be --

1 wouldn't want to mislead you to think that
2 there couldn't be challenges to what's been
3 done. Some people have challenged actions
4 taken. But I'm not -- here, we work -- you
5 know, we work for the governor and the
6 governor made the decision to move the
7 money. So --

8 MS. ISAACKS:

9 What fiscal year is it for?

10 MS. ANDREWS:

11 Fiscal -- it was done in fiscal year
12 '15. And it has been already --

13 MS. ISAACKS:

14 It's already been moved.

15 MS. ANDREWS:

16 -- swept and moved. Yes; it has.

17 MS. ISAACKS:

18 But the new budget starts July 1.

19 MS. ANDREWS:

20 Yes, it does.

21 MS. ISAACKS:

22 So that's about a week or so.

23 MS. ANDREWS:

24 Yes.

25 MS. ISAACKS:

1 A week and a half still left.

2 MS. ANDREWS:

3 Yes.

4 MS. ISAACKS:

5 Do you know if it was swept -- because
6 we were under the impression as the
7 appropriations chair (inaudible) that going
8 into the new session, we understood -- and
9 we were at that committee hearing and a few
10 others -- but that that was safe. Has that
11 one also been hit?

12 MS. ANDREWS:

13 I was at the same meeting you were
14 where he protected the revenue opportunity
15 of \$8 million.

16 MS. ISAACKS:

17 In the -- I'm talking about though the
18 2015-'16. I'm just asking, like, is that
19 something we don't know? If this is
20 reflective of 2014-'15? Is that the way I
21 understand it?

22 MS. ANDREWS:

23 I'm not sure I understand --

24 MS. ISAACKS:

25 The \$1 million.

1 MR. THERIOT:

2 She's wondering whether that money was
3 allocated under next year's budget? In
4 other words, the sweeping was --

5 MS. ANDREWS:

6 It has -- it has not been given back
7 to us.

8 MS. ISAACKS:

9 No, no, no, no. Like --

10 MR. THERIOT:

11 No. I -- I know what she's trying to
12 say. I think --

13 MS. ISAACKS:

14 The \$1 million that was taken is for
15 this fiscal year, you said.

16 MS. ANDREWS:

17 Yes.

18 MS. ISAACKS:

19 So, okay, that was in February.

20 MS. ANDREWS:

21 Yes.

22 MS. ISAACKS:

23 Fast forward to the new session. Was
24 it in the budget bill for 2015-'16 that we
25 don't know of because --

1 MS. ANDREWS:

2 No. This was -- this specifically was
3 done because there was a budget reduction.
4 It was a avoidance of a budget deficit. And
5 there has to be certain things that occur.
6 Revenue estimating committee has to meet and
7 the revenues of the state have to hit
8 certain marks. And that was what occurred
9 that actually allowed the legislature and
10 the governor and the commissioner of
11 administration to do what they did.

12 MR. THERIOT:

13 I -- I think some of the confusion may
14 be that --

15 MS. ISAACKS:

16 I'm not confused.

17 MR. THERIOT:

18 -- next year's appropriation for the
19 budget that starts July 1st, that's in the
20 document that was just signed yesterday.

21 MS. ANDREWS:

22 That's House Bill 1.

23 MS. ISAACKS:

24 Right.

25 MR. THERIOT:

1 Okay. That is not this million.

2 MS. ISAACKS:

3 I understand.

4 MR. THERIOT:

5 Okay. So --

6 MS. ISAACKS:

7 That's what I'm asking. Was it done -
8 - since we were kind of unaware of that, did
9 we miss something? Because our
10 interpretation was it went by okay this
11 session. Are we wrong in thinking that?

12 MR. THERIOT:

13 Well, and to tell you the truth, if
14 there's a deficit next year, this could
15 happen again.

16 MS. ISAACKS:

17 Sure. I understand.

18 MR. THERIOT:

19 Okay. And it's done when the revenue
20 estimating committee anticipates a budget
21 deficit. And it's not just this fund, but
22 I'm sure it's quite a few funds.

23 MS. ISAACKS:

24 I understand.

25 MR. IVEY:

1 Is it voted on in committee or is it
2 just a decision by the governor?

3 MS. ISAACKS:

4 She said in committee it was done.

5 MS. ANDREWS:

6 It -- it's done in committee. But it
7 is actually through the statute, the
8 governor is allowed to direct the
9 commissioner. But it was done in -- in
10 committee.

11 MR. THERIOT:

12 And it is the first time I've seen it.

13 MS. ANDREWS:

14 Yes. I don't know that they've ever
15 actually done this.

16 MR. THERIOT:

17 The power has always been there.

18 MS. ANDREWS:

19 This -- I believe this one -- and the
20 reason it's never been done, I think this
21 went into effect in 2009, so it's -- this is
22 really, I believe, the first time it's ever
23 been put in place.

24 MR. THERIOT:

25 I haven't had a chance to look up the

1 actual amendments, but it was amended in
2 2009. So --

3 MS. ISAACKS:

4 No. We understand. We did -- we
5 understand. We did some legal research to
6 try and understand prior to. So we -- you
7 know, I think our question is just to check.

8 MR. BURNHAM:

9 Okay. Well, we'll move on. This is
10 certainly a point of contention for LOMA and
11 something that will need to be discussed
12 some more, I'm sure. And from my
13 standpoint, the setting of the precedent is
14 -- probably the most alarming or concerning
15 part of this, to me, is the potential for it
16 to happen over and over. So --

17 MS. ANDREWS:

18 I think we're all in agreement.

19 MR. BURNHAM:

20 Okay. Any other questions for Karyn?

21 (No response.)

22 MS. VIZINAT:

23 Don't forget to adopt the minutes.

24 MR. BURNHAM:

25 Oh, thank you very much.

1 MS. ISAACKS:

2 I move to adopt the minutes.

3 MR. BURNHAM:

4 We need to adopt the minutes from the
5 February 12, 2015 meeting. I've got a
6 motion to adopt.

7 MR. MARCELLO:

8 Second.

9 MR. BURNHAM:

10 I have a second. Any objections?

11 (No response.)

12 MR. BURNHAM:

13 Thank you.

14 Okay. We'll move onto the auditor's
15 status report. Cy?

16 MR. MORIN:

17 Okay. At Mr. Milazzo's request, I've
18 provided this documentation for you to view.

19 Currently, we have 34 open audit
20 cases. If you look at the first page, this
21 represent 17 of the 34 audits that were
22 opened in fiscal year '15. This spreadsheet
23 shows the reason the audit was initiated,
24 the results of the audit, the potential
25 assessment, pending review, and the status

1 of the audits.

2 This represents eight potentially
3 clean audits and five audits with potential
4 assessments, pending review, totaling
5 \$11,144.40.

6 Any questions?

7 (No response.)

8 MR. MORIN:

9 If not, we'll turn to the next page.
10 This page represents fiscal year '14 audits.
11 These are ten of the 34 audits that are
12 currently open. Nine of these audits -- for
13 nine of these audits, the fieldwork has been
14 completed and they're pending review. Six
15 are potentially clean audits. Two potential
16 audit assessments, totaling \$700.09. And we
17 have one potential credit, pending final
18 review, of \$3,292.22.

19 We have one last case at the top of
20 the -- this sheet. We've done our initial
21 review; however, the auditors are following
22 up on that case for -- for some items. So
23 the potential -- the findings and assessment
24 for that case could potentially be adjusted
25 or changed.

1 If you'll turn to page three. This
2 page represent three audits in fiscal year
3 '13. This is three of the 34 open audits.
4 One of these audits has been referred to
5 legal for collection for of \$4,016.58.
6 Legal filed a petition on 2/14/15. Legal is
7 currently moving forward to obtain a
8 judgment on this case. And fieldwork has
9 been completed for the other two audits. We
10 have one potential assessment of \$4,846.82,
11 pending final review.

12 If you'll turn the page. The last
13 page represents the remaining four audits
14 and -- and -- that are in legal that --
15 that occurred prior to fiscal year '13. It
16 also includes the fiscal year '13 audit that
17 I've already discussed that's in legal.

18 For the first case listed on here, a
19 consent agreement was initially obtained and
20 we've collected approximately half of this
21 assessment. Legal is currently reviewing
22 the file to determine the next course of
23 action. This is a -- it's a -- it's a case
24 that's very old and the business is no
25 longer operating as a motor fuel

1 distributor.

2 The second case listed on here, we've
3 obtained a judgment for this amount listed.
4 Legal has mailed -- legal mailed a petition
5 for garnishment, totaling \$21,190.14. This
6 includes additional legal costs and things
7 like that. We've collected \$4,000 of this
8 assessment. And at this point, legal will
9 be referring the case to the Office of Debt
10 Recovery. We've discussed -- we discussed
11 that in the last meeting, the scenario of
12 the cases that we cannot collect on, will
13 be, you know, eventually forwarded to the
14 Office of Debt Recovery. So this may
15 potentially be one of those initial ones.

16 The third case listed on here, we're
17 waiting for the succession to be opened in
18 this case for the deceased owner. And legal
19 is going to continue to followup to see when
20 the succession is open so that we can file a
21 claim against the succession.

22 The case listed at the bottom by
23 itself, 3-08-005, legal has determined this
24 is uncollectible. They provided me with
25 bankruptcy papers a few days ago. So we

1 will be moving to close this -- this case
2 as uncollectible.

3 And as you can see on this page here,
4 the current amount outstanding is
5 \$127,969.73. That includes the outstanding
6 fees and penalty amounts, as well as all of
7 the related court cost and -- and other
8 legal fees.

9 MR. BURNHAM:

10 Cy, this is -- this is all very good
11 data. Do you know what Johnny's primary
12 motivation was in asking for this? I -- I
13 remember hearing him talk about just wanting
14 to make sure that the evil-doers, so to
15 speak, that everybody was on a playing --
16 level playing field and that people who were
17 not correctly operating their stations were
18 being penalized. Was that his motivation
19 for pulling this together, or was there
20 something else that you're aware of?

21 MR. MORIN:

22 I mean, I think that's his primary --

23 MR. BURNHAM:

24 Yes.

25 MR. MORIN:

1 -- motivation, yes. And I -- I think
2 he was wanting to see -- he was wanting to
3 see the picture -- you know, he was wanting
4 to have something to put his eyes on.

5 MR. BURNHAM:

6 And -- and you were -- you were kind
7 enough to list reasons for audit.

8 MR. MORIN:

9 Right.

10 MR. BURNHAM:

11 Do we --

12 MR. MORIN:

13 And this --

14 MR. BURNHAM:

15 Do we --

16 MR. MORIN:

17 This is --

18 MR. BURNHAM:

19 Do we do a certain amount of audits a
20 year?

21 MR. MORIN:

22 Yes. Well, currently --

23 MR. BURNHAM:

24 Are they randomly selected?

25 MR. MORIN:

1 Currently, we're doing 18 a year.

2 MR. BURNHAM:

3 Okay.

4 MR. MORIN:

5 We had 18 for fiscal year '15. And I
6 -- I have the dedicated motor fuel auditor
7 and -- and he -- he does research. He
8 updates his -- his information on a very
9 regular basis. And based on that research
10 and -- and these various statuses, so to
11 speak, he decides which is -- is maybe the
12 best candidate for an audit, based on the --
13 on -- on, you know --

14 MR. BURNHAM:

15 Yes.

16 MR. MORIN:

17 -- if something is missing or -- or
18 it's delinquent or if we haven't done an
19 audit on them ever or, you know, like that.

20 MR. BURNHAM:

21 Okay.

22 MR. MORIN:

23 We are -- we are planning a meeting in
24 the near future to discuss some of the other
25 things that he had mentioned as far as our

1 research tools and really be able to --
2 being able to look at what's being reported
3 to the department as a big picture, you
4 know, and have tools that will give us a --
5 a big picture view of it more easily. And
6 then we can kind of, you know, drill down
7 and -- and find more problems.

8 MR. BURNHAM:

9 Are there any other questions for Cy?

10 (No response.)

11 MR. BURNHAM:

12 Okay. We'll move on to the trust fund
13 status report. Jeff?

14 MR. BAKER:

15 All right. Good afternoon. Please
16 refer to tab number five in your packets.
17 These are the figures for the third quarter
18 of fiscal year 2015. During the third
19 quarter of fiscal year 2015, the trust fund
20 received 230 applications, totaling
21 \$2,863,243. 212 applications were processed
22 for payment, during the fiscal quarter,
23 totaling \$2,789,780. And 33 applications
24 were returned with deficiencies. For sites
25 in the corrective action phase, the

1 outstanding liability of corrective action
2 plan budget and estimated cost to reach
3 closure at the end of December -- I'm sorry,
4 it should be March 2015, was \$30,752,300.
5 The additional obligation recognized for
6 non-capped sites, plus the projected motor
7 fuel trust fund to environmental trust fund
8 transfer is \$41,230,800. At the end of
9 March 2015, the trust fund had 136 pending
10 applications to process, which had requested
11 amounts, totaling \$1,744,273. Of this
12 amount, the estimated requested obligations
13 related to cap budgets and closure cost
14 was \$1,090,735. If you'll look at the last
15 page of your packets, it's the legal sized
16 page, the number of trust fund sites that
17 received no further action thus far for the
18 current fiscal year was 23 sites. The
19 number of potential trust fund sites that
20 were reviewed and made eligible during the
21 current fiscal year was 28, representing 31
22 active incidents.

23 Just some points of interest. The
24 trust fund staff is continuing to work on a
25 draft of the next revision of the motor fuel

1 trust fund cost control guidance document.
2 Numerous meetings have been held by the
3 staff, working to clarify language in the
4 document. The registered RAC community has
5 been contacted. And a number of individuals
6 have volunteered their time to participate
7 in document -- in guidance document
8 workgroups. Once the trust fund staff has --
9 - document revisions are completed, a draft
10 version of this document will be sent to the
11 workgroup. They will have an opportunity to
12 review the draft document and help provide
13 guidance relating to specific points of
14 concern and/or questions. The goal is to
15 clarify the document, guidance language
16 and/or to research and develop new or
17 revised unit rates.

18 Another point of interest, the trust
19 fund section is losing two of our
20 application reviewers. We are actively
21 interviewing and should have the positions
22 filled within the next few weeks.

23 Another point is, the Senate Bill 244
24 was passed by the legislative and is
25 currently awaiting the Governor's signature.

1 This bill increases the maximum dollars
2 available for eligible releases from one
3 million to one point five million dollars.
4 We are currently reviewing the potential
5 limitation of this bill as it relates to
6 sites with active releases, and Perry is
7 going to go over that a little bit farther
8 on in the -- in the discussion.

9 MR. BURNHAM:

10 Okay.

11 MR. BAKER:

12 And that completes -- concludes my
13 points. Does anybody have any questions?

14 MR. BURNHAM:

15 Very good.

16 MR. IVEY:

17 I -- I've got one. When -- I -- I
18 guess on the re-cap guidance document, when
19 ya'll send that out to the different RACs,
20 are you just sending it to the individual
21 RACs and then they're going to make comments
22 individually back, or is it going to be kind
23 of a group meeting on that, or how -- how
24 are ya'll handling that?

25 MR. BAKER:

1 What we did was, about a month ago, I
2 sent out an email to all the RACs and asked
3 for volunteers --

4 MR. IVEY:

5 Okay.

6 MR. BAKER:

7 -- to participate in a workgroup. We
8 got back about seven or eight individuals
9 that have volunteered to participate in
10 that. When we finish with our draft
11 version, we're going to send it to that --
12 those eight first, and let them give us some
13 guidance. Part of this is also going to be
14 points of -- there are questions that we
15 have and we're going to put those on the
16 side of the document. We're documenting the
17 changes, but we're also putting comments out
18 to the side --

19 MR. IVEY:

20 Okay.

21 MR. BAKER:

22 -- justifying why those changes were
23 necessary. But there are also going to be
24 questions out there that will be going to
25 the workgroup, saying, "We" -- "We're not

1 quite sure about this. Would you give us a
2 little bit better understanding about this?"
3 Once we kind of hash that out, if there are
4 any points where we need to get together as
5 a larger group, we will schedule those
6 meetings. And then beyond that point, once
7 -- once that workgroup comes to a consensus
8 that we have a good document, then we're
9 going to send it out to the board, the RAC
10 community and -- and all other stakeholders
11 for their comments.

12 MR. IVEY:

13 Okay.

14 MR. BURNHAM:

15 Any other questions?

16 (No response.)

17 MR. BURNHAM:

18 Okay. We'll move on to Perry with
19 third party claim status.

20 MR. THERIOT:

21 Well, before we get to the third party
22 claims, as we just talked about SB 244,
23 first of all, for those of you who haven't
24 met Chance, this is Chance McNeely, our new
25 Assistant Secretary for the Office of

1 Compliance. He ask that we just put this
2 out here for you guys to take a look at and
3 to give us any feedback you might have.

4 As you know, the SB 244 increases the
5 amount of the availability of funds for
6 reimbursement to one and a half million from
7 one million. It does not make any reference
8 to how the department is to apply that
9 increase. So if you look in that little
10 handout I gave to you, the options, of
11 course, that are available are that the law
12 only applies to releases that are discovered
13 after the effective date of the statute.
14 That would mean that any new claim that was
15 filed after the 1st -- August 1st, which is
16 the prospective effective date of this bill
17 -- of this bill would be covered by the
18 higher amount. Anything before that would
19 be covered by the lower amount. I like to
20 call that the insurance company response,
21 because that's what you would get from an
22 insurance company. They would tell you, "We
23 don't insure stuff that's already broke."
24 Okay. That's one.

25 One is, it would apply to applications

1 received after August 1st, 2015 for work
2 that was done after August 1st. And even
3 though the release was prior to August 1st,
4 the work was done after August 1st. So
5 that's a second option.

6 And then third, which I call the
7 benefit option, would apply to any work that
8 was done on any site that is less than two
9 years old. As I like to say, on your next
10 sheet, 30:2195.4 prevents the department
11 from using any funds for remediation
12 activity whether work is over two years old
13 with an effective date of August 1st. Two
14 years -- if we received an application
15 on August 1st, 2015 for work that was done
16 August 1st, 2013, it would be covered. If
17 it was done the day before, it would not be
18 covered.

19 MR. BURNHAM:

20 So the benefit option is the broadest
21 coverage that could be provided legally; is
22 that right?

23 MR. THERIOT:

24 That's right. That would be the
25 broadest. The narrowest would be, of

1 course, the one that deals with only
2 releases that -- that occur after August
3 1st. Those -- those are some of the
4 options. And some of the problems and --
5 that you have to look at under differing
6 sites -- okay, just a little example that I
7 stuck in here. We have -- as a practical
8 matter, we've got sites where one million
9 was paid. We closed the books at the trust
10 fund on that site. And usually, it's
11 accompanied by a demand letter from me,
12 telling the responsible party that we have
13 used up all of the fund, you need to finish
14 the job on your own. That's -- we've got a
15 few like that. And the question would be
16 whether those sites would be reopened. And,
17 of course, there's a lot of things to
18 consider when you look at that, has work
19 been done that was not approved by the ROG,
20 has work -- has the technology (inaudible)
21 changed, has -- has the responsible party
22 not used a qualified RAC, has the
23 responsible party not followed the cost
24 control document? All of those things come
25 to play in how you decide whether this --

1 this claim for those type of sites would be
2 covered. You've got sites right now that
3 are opened and still submitting applications
4 but are rapidly approaching the one million.
5 So same considerations would apply. They --
6 most have gotten letters from us telling
7 them, "You're approaching the one million
8 dollars." We have a system in place where
9 we send out that letter. The question would
10 be, do you wait on that site to do
11 additional work until after August 1st so
12 that you would have the additional five
13 hundred thousand, if that option is taken?

14 So -- and the last is the -- the most
15 problem would be sites that if we make a
16 decision one way to take sites that are up
17 to two years, would -- if they've done work
18 without those qualifications that we've
19 talked about, whereas there's been no ROG
20 meeting, no budget, no technology approval
21 and the RP has been doing the work
22 themselves. Okay. Will they be able to get
23 reimbursement for that is one of the
24 concerns that we have to take into account.

25 I have a little last page. It's

1 really the considerations. It's, you know,
2 your cost to the fund and the ability to
3 track the work that has been done for sites
4 that really weren't really in the system any
5 -- anymore. Documentation that might not or
6 might be available. Adherence to the cost
7 control document. Certainty. Whatever
8 position we should take, we want it to be as
9 certain as possible so that both our
10 auditors here and the people who are working
11 can be sure that they're either going to get
12 reimbursed or they're not. So that's --
13 fairness, I -- I think is a big thing that
14 we have to consider, because we want to be
15 fair to those -- you know, to the intent of
16 the law which was to increase the -- the
17 amount of the fund. Staffing demands. If
18 we all of a sudden get a whole bunch of old
19 sites that get dumped into the system,
20 that's going to have staffing size. And
21 then these old sites that were closed, we
22 have to consider whether they would be
23 eligible for a reopening.

24 So do ya'll have any questions about
25 that, that ya'll wanted to ask?

1 MR. BURNHAM:

2 Does the department have any
3 recommendations at this time, or -- or this
4 is all new to you to, right?

5 MR. THERIOT:

6 Well --

7 MR. BURNHAM:

8 I mean --

9 MR. THERIOT:

10 -- I mean, because there's always the
11 possibility of a veto, you don't do it until
12 the law gets closer to becoming in effect,
13 even though I don't believe that this will
14 be vetoed. So we're considering it and we
15 wanted the board's input. So any -- any
16 sort of input that you might have, feel free
17 to send it in to -- to Jeff and we'll
18 communicate it to the decision makers here
19 and -- and we'll move on from there, and we
20 will let you know what the decision is. But
21 we did want the board's input.

22 MR. MARCELLO:

23 I have a question and I don't know if
24 you've covered it. Under your option
25 section, it states, "applies only to

1 releases occurring after August 1." But if
2 a -- if a -- if a release happens July 1,
3 and you -- and you apply August 1, which
4 takes precedence?

5 MR. THERIOT:

6 That -- that's an interesting
7 question. And I think, Jeff, you may have
8 pointed this one out. Jeff and I have
9 discussed whether it's -- mostly, we usually
10 -- our usual practice is to consider the
11 site from the date that the trust fund
12 receives the application, is our usual
13 practice. I would say that we would
14 probably stick with that practice, okay,
15 because it -- it does provide the certainty
16 factor that we're talking about. But there
17 are limits. I mean, suppose that the
18 release happened two and half years ago and
19 we get our notice August 1st but no works
20 been done. Do we -- does it -- does it
21 apply? That's one of the considerations you
22 could -- you're -- you need -- we need to
23 look at because maybe somebody might have
24 been considering the site as being not
25 eligible and then all of a sudden, they want

1 to try and get the eligibility. I don't
2 think it's going to happen much as a -- you
3 know, because I think most sites have been
4 trying to get -- most sites try to get
5 eligibility as quick as they can. So I
6 don't know that it'll be as big a concern.
7 But it is a question to -- that we need to
8 look at, as to when we will date that --
9 those rights, because that's what it amounts
10 to is the right to reimbursement legally
11 vest at a certain time. Our current
12 practice that we use is to use the date the
13 request for eligibility is received.

14 MR. MARCELLO:

15 But on -- at present day rules that
16 you adhere to, what -- what's the practice -
17 -

18 MR. THERIOT:

19 We've never --

20 MR. MARCELLO:

21 -- what was the practice five years
22 ago?

23 MR. THERIOT:

24 We've never had a change in the amount
25 of coverage. It's always been one million,

1 so it's never come up.

2 MR. MARCELLO:

3 But was there a time frame involved,
4 like there is now?

5 MR. THERIOT:

6 The only time frame contained in the
7 statute is we can't -- we're prohibited from
8 paying for remediation work where the --
9 where the -- the submission is more than two
10 years --

11 MR. MARCELLO:

12 Two years, okay.

13 MR. THERIOT:

14 -- after the work was done. That's
15 the current law. And -- and it's never come
16 up as to the increase. So you would get --
17 I don't know that it's going to come up too
18 much because remember, we're going from a
19 million to a million and a half. It would
20 only come up, I think, on a site where the
21 million is getting close or has been
22 reached. I -- I don't know that somebody
23 would've sat on a million dollar claim for
24 two -- for over two years. I mean, I -- I
25 just don't see that as being a possible

1 thing. I guess it could happen. But, you
2 know, I think that it's a -- would be a
3 rarity. And I think that the department
4 will usually try and stick to it's current
5 practice in that if we receive an
6 application that's -- that'll be the date
7 that sets the rights, I think.

8 MR. MARCELLO:

9 Right.

10 MR. THERIOT:

11 Unless we get something way out in
12 left field.

13 MR. IVEY:

14 So if -- if you went with the option
15 of -- of, I guess, how it is right now, with
16 the two year window, what -- I guess -- I
17 guess I'm not quite following that.

18 MR. THERIOT:

19 Yes. Okay. When -- currently, the
20 two year limitation applies to work. We do
21 have sites that are more than two years old
22 where investigation is being done and hasn't
23 been completed. They -- the two year clock
24 starts to work from the -- when the
25 remediation work begins. Investigations, we

1 have some that are exceedingly old. We
2 would like to remedy that situation for the
3 future. But we currently gate from the time
4 remediation work takes place with what is
5 the two year frame provided by the statute.

6 MR. IVEY:

7 Yes. So -- so if the department left
8 it just like it is with the two year deal,
9 if you receive a package, no matter what --
10 what the time frame is, whether it was
11 before or after August 2015, if it was
12 within the two years, you could pay that if
13 you have the proper documentation in there,
14 which might be approval from the team
15 leader? It could mean that you required ROG
16 approval. You don't have that. So you
17 might not pay it.

18 MR. BAKER:

19 That's correct.

20 MR. IVEY:

21 I mean, you could go that route?

22 MR. BAKER:

23 That's correct. That -- and that's
24 the --

25 MR. IVEY:

1 That would be the easiest route.

2 MR. BAKER:

3 That's the logistics -- that's the
4 logistics of this. And that's the concern
5 of going back two years is that, when -- if
6 -- if this site is beyond the million
7 dollars and now all of a sudden it's asking
8 for reimbursement, at that point, when they
9 hit the million dollars, it's no longer
10 under the purview of the trust fund where
11 every dollar that gets spent has to be
12 approved and -- and they're following
13 guidelines, they're keeping track of their
14 documentation, it's being done by -- by a
15 certified RAC, all the work being done by a
16 certified RAC, everything is as it should
17 be. Once it hits the million dollars, it
18 doesn't follow those rules as strictly. And
19 what the concern I have is, is that once
20 those -- those applications start coming in,
21 we're going to be denying some stuff because
22 it doesn't have what it's suppose to have.

23 MR. IVEY:

24 Sure. But if -- but if it did have
25 what you required --

1 MR. BAKER:

2 If it had what it was suppose to have

3 --

4 MR. IVEY:

5 -- then you would pay it?

6 MR. BAKER:

7 If it --

8 MR. IVEY:

9 It would be -- it's the same way it is
10 now. If you receive something now that
11 doesn't have team leader approval, doesn't -
12 - it -- they did use a qualified RAC, you
13 don't pay it. You kick it back now.

14 MR. BAKER:

15 That's right.

16 MR. IVEY:

17 It would be the same thing.

18 MR. BAKER:

19 Exactly.

20 MR. IVEY:

21 Yes. Okay.

22 MR. BURNHAM:

23 Any other questions?

24 (No response.)

25 MR. BURNHAM:

1 Perry, was there anything else on
2 third party claims?

3 MR. THERIOT:

4 Yes, there is. And we need to get to
5 executive session real quickly to go over
6 some of the things that -- in the third
7 party claim provisions that deal with
8 settlements and the like.

9 MR. BURNHAM:

10 Okay.

11 MR. THERIOT:

12 So we should go into executive
13 session.

14 (The board went into executive session.)

15 (The meeting re-convened.)

16 MR. BURNHAM:

17 Okay. Thank you all. Is there --
18 we're down to item number seven on our
19 agenda. Is there any other business to
20 discuss? Anyone?

21 MR. MARCELLO:

22 I humbly ask for two minutes.

23 I -- I'm looking for something in the
24 -- in the minutes of the last meeting and I
25 would like to ask a question, if I could

1 find it.

2 MR. BURNHAM:

3 Okay.

4 MR. IVEY:

5 While he's looking that up, Jeff, when
6 do we need to have an answer to you on, I
7 guess, our opinion on how to handle the
8 bill, the one point five million?

9 MR. BAKER:

10 As soon as you can. I mean --

11 MR. IVEY:

12 Okay. Is there a deadline?

13 MR. BAKER:

14 We haven't --

15 MR. IVEY:

16 Because I'm sure LOMA is going to want
17 to --

18 MS. ISAACKS:

19 Can --

20 MR. IVEY:

21 -- make a response to it.

22 MR. BAKER:

23 We haven't talked about a deadline.
24 But, I mean, you know, in the next week or
25 so would be great.

1 MR. IVEY:

2 Okay.

3 MR. BURNHAM:

4 Natalie, can you spearhead --

5 MS. ISAACKS:

6 Can you email it to me --

7 MR. BAKER:

8 Sure.

9 MS. ISAACKS:

10 -- the -- whatever you handed out?

11 MR. BAKER:

12 Absolutely.

13 MR. ISAACKS:

14 Just to have the notes or --

15 MR. MARCELLO:

16 Basically my question -- and I wanted
17 to go on record again opposing the
18 quote/unquote sweep. And one of the
19 concerns I have is the department's lack of
20 -- of communication with the Louisiana Oil
21 Marketer's and Convenience Store
22 Association. I was looking for the previous
23 conversation in the last minutes. And if
24 you -- I'm looking on page 47 where I know
25 we spoke of it. And -- and I'm sure we

1 spoke of it more in this report -- in these
2 minutes. But we talked about -- Mr. Kerry
3 Hill talked about the consensus of our
4 organization in reference to a sweep and so
5 forth and I -- I think the -- the -- the --
6 the Department of Environmental Quality
7 Board knew of our concern about the sweep
8 and this report that we got is dated June 5,
9 and I would -- the -- and when I use the
10 date June 5th, I mean the report that was
11 drawn up that Ms. -- Ms. Andrews spoke of.
12 So the sweep had to take place prior to
13 that. Which means that gave the department
14 a few weeks to let us know out of respect,
15 if you will, that a sweep was taking place.
16 And it didn't happen. So my only request
17 is, we -- we work very, very well with the
18 Department of Environmental Quality and I --
19 I'd like to see us work a little closer, as
20 we have in the past. We have sought legal
21 counsel on -- on this sweep. And I'm here
22 to tell you, we all know about the Louisiana
23 Office of Probation and Parole who has been
24 swept, filed suit, won their lawsuit, and
25 now they have a judgment. Now, how do you

1 get paid on a judgment? The legislative has
2 to appropriate the money. So we can
3 quote/unquote forget about this money that's
4 been swept, because I don't see us getting
5 it back. But in the future, in order to
6 protect the interest of the -- of all
7 distributors of -- of petroleum products
8 that collect this money, I'd like to see
9 when -- when -- when things like this
10 happen, our -- our -- our association gets
11 notified. Thank you.

12 MR. BURNHAM:

13 Okay. Any other comments or business?

14 (No response.)

15 MR. BURNHAM:

16 All right. Thank you all for coming.

17 With that, I'll ask for a motion to --

18 MR. MARCELLO:

19 I move.

20 MR. BURNHAM

21 -- close our meeting? Second?

22 MR. FULTON:

23 Second.

24 MR. BURNHAM:

25 Any opposed.

1 (No response.)

2 MR. BURNHAM:

3 Thank you. Our meeting is adjourned.

4 THE MEETING ADJOURNED AT 2:21 P.M.

5 * * * * *

In The Matter Of:

*DEPARTMENT OF ENVIRONMENTAL QUALITY
MOTOR FUELS UNDERGROUND STORAGE TANK TRUST*

*MEETING
June 24, 2015*

*Associated Reporters, Incorporated
225-216-2036*

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1 A week and a half still left.

2 MS. ANDREWS:

3 Yes.

4 MS. ISAACKS:

5 Do you know if it was swept -- because
6 we were under the impression as the
7 appropriations chair (inaudible) that going
8 into the new session, we understood -- and
9 we were at that committee hearing and a few
10 others -- but that that was safe. Has that
11 one also been hit?

12 MS. ANDREWS:

13 I was at the same meeting you were
14 where he protected the revenue opportunity
15 of \$8 million.

16 MS. ISAACKS:

17 In the -- I'm talking about though the
18 2015-'16. I'm just asking, like, is that
19 something we don't know? If this is
20 reflective of 2014-'15? Is that the way I
21 understand it?

22 MS. ANDREWS:

23 I'm not sure I understand --

24 MS. ISAACKS:

25 The \$1 million.

1 It is -- all the monies -- even though
2 that it's paid in as a fee, all monies that
3 come to the trust fund are subject to
4 appropriation. We -- we can't use the
5 money, even though it's paid, unless it's
6 been appropriated. The legislature still
7 decides where the money goes, when the money
8 goes. And the governor has limited powers
9 to move money in a deficit situation, which
10 was what this statute was set up for. It
11 was set up for -- to give the governor
12 ability within existing appropriations to
13 move money. And that's what was done. He -
14 - he moved the five percent.

15 MS. ISAACKS:

16 So it was done in -- in that specific
17 meeting?

18 MS. ANDREWS:

19 Yes, it was.

20 MR. BURNHAM:

21 So, Perry, it's your interpretation
22 that the state was within their rights to do
23 it legally?

24 MR. THERIOT:

25 The statute says it. I would be --

In The Matter Of:

*DEPARTMENT OF ENVIRONMENTAL QUALITY
MOTOR FUELS UNDERGROUND STORAGE TANK TRUST*

MEETING

June 24, 2015

Associated Reporters, Incorporated

225-216-2036

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Page 1

1
2
3 STATE OF LOUISIANA
4 DEPARTMENT OF ENVIRONMENTAL QUALITY
5 MOTOR FUELS UNDERGROUND STORAGE TANK TRUST
6 FUND ADVISORY BOARD
7
8
9
10
11
12
13 The above-entitled meeting was held at the
14 IDEQ, Galvez Building, Conference Center, 602
15 North 5th Street, Baton Rouge, Louisiana,
16 beginning at 1:10 p.m., on June 24, 2015.
17
18
19 BEFORE:
20 Lori B. Overland
21 Certified Court Reporter
22 In and For the State of
23 Louisiana
24
25

Page 2

1 A P P E A R A N C E S
2
3 Steve Burnham
4 Chairman
5 Durwood Franklin
6 Jeff Baker
7 Gary Fulton
8 Shawn Ivey
9 Karyn Andrews
10 Cy Morin
11 Natalie Isaacks
12 Frank Marcello
13 Perry Theriot
14
15 Melissa Vizinat
16 Jason Efferson
17 Ian Kelley
18 Samuel Broussard
19 Ted Broyles
20 Heather Pettus
21
22 * * * * *
23
24
25

Page 3

1 I N D E X
2
3 EXAMINATION: PAGE(S) :
4 None
5 EXHIBITS:
6 None
7
8 REPORTER'S PAGE 54
9 REPORTER'S CERTIFICATE 55
10
11 * * * * *
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1 MR. BURNHAM:
2 Okay. We'll go ahead and call our
3 meeting to order. I'll be standing in for
4 Johnny Milazzo today, who's absent. I
5 appreciate all of ya'll coming. I'm not
6 sure if I need a motion to call the meeting
7 to order or not? But do I hear a motion to
8 call the meeting to order?
9 MR. IVEY:
10 Motion to call the meeting to order.
11 MR. FULTON:
12 Second.
13 MR. BURNHAM:
14 Thank you. With that, we'll proceed
15 with our roll call.
16 MS. VIZINAT:
17 Melissa Vizinat, Trust Fund.
18 MR. MORIN:
19 Cy Morin, DEQ Audit.
20 MS. ANDREWS:
21 Karyn Andrews, Financial Services,
22 DEQ.
23 MS. ISAACKS:
24 Natalie Isaacks, Louisiana Oil
25 Marketers, proxy for Kerry Hill.

1 MR. MARCELLO:
2 Frank Marcello, Marcello Distributors,
3 Louisiana Oil Marketers. It's a convenience
4 store association.
5 MR. BURNHAM:
6 Steve Burnham with Engineering
7 Associates.
8 MR. IVEY:
9 Shawn Ivey, PPM Consultants.
10 MR. FULTON:
11 Gary Fulton, DEQ USTRD Administrator.
12 MR. BAKER:
13 Jeff Baker, DEQ Motor Fuel Trust Fund.
14 MR. FRANKLIN:
15 Durwood Franklin, DEQ Trust Fund.
16 MR. THERIOT:
17 Perry Theriot, DEQ Legal.
18 MR. KELLY:
19 Ian Kelly, DEQ Trust Fund.
20 MR. EFFERSON:
21 Jason Efferson, DEQ Trust Fund.
22 MS. PRUETT:
23 Heather Pruett, SEMS.
24 MR. BROUSSARD:
25 Samuel Broussard, USTR Division.

1 legislative process, there was a cash sweep
2 and it reduced our cash balance by
3 \$1,182,856. This is per Louisiana Revised
4 Statute 39:7562.b. And that was due to a
5 budget deficit. And so there was a cash
6 reduction. We now have a balance, after
7 obligations, \$5,597,362.
8 Go ahead and turn the page. Okay.
9 This is an information report for the
10 interest revenue from the trust fund. This
11 is interest revenue collected since
12 inception to date. It equals \$6,655,442.
13 Expenditures total, \$1,229,930. And there
14 have been no expenditures in fiscal year
15 2015.
16 Go ahead and turn the page. This
17 report details how we calculate the amount
18 transferred from the Motor Fuel Trust Fund
19 to the Environmental Trust Fund. And this
20 details our revenues and expenditures. And
21 on this page, we're estimating that in
22 fiscal year 2015, reimbursements to the
23 Environmental Trust Fund are going to be
24 \$6,235,421. And this is primarily
25 attributable to direct department salaries

1 MR. BROYLES:
2 Ted Broyles. I'm an attorney with the
3 DEQ Legal Division.
4 MS. CARTER:
5 Jill Carter, DEQ Legal.
6 (Inaudible)
7 MR. MCNEELY:
8 Chance McNeely, DEQ Office of
9 Environmental Compliance.
10 Ms. Norman:
11 Alexis Norman, law clerk, DEQ.
12 MR. GUICE:
13 Steven Guice, law clerk, DEQ.
14 MR. BURNHAM:
15 Thank you. Our next item is the
16 financial services report. Karen?
17 MS. ANDREWS:
18 Thank you. Start on tab three. So at
19 the beginning of the year, we transferred
20 into the trust fund \$70,252,211. As of
21 March 31st, 2015, we have deposited
22 \$16,205,659. And we've paid out
23 reimbursements of \$7,041,015. Current
24 liabilities on sites, \$72,636,637.
25 You'll also note that this year during

1 related benefits. And we did have an
2 increase of legal fees paid to the attorney
3 general's office. That will be also
4 directly deposited back to the Motor Fuel
5 Trust Fund at the end of this year. And we
6 can go into that further later, if you'd
7 like to discuss that.
8 Do you guys have any questions?
9 MR. IVEY:
10 What was the -- what was the sweep of
11 the money for? Say that one more time.
12 MS. ANDREWS:
13 Okay. So during the -- there was a
14 mid-year deficit. It's what they call a --
15 a voidance of a budget deficit. And the
16 governor did an interim budget balancing.
17 This was the end of February. And they --
18 they -- they do through the revenue
19 estimating committee and if we go back to --
20 to Revised Statute 39:75c, "Upon receiving
21 notification that a projected budget deficit
22 exists, the governor shall have interim
23 budget balancing powers to adjust the budget
24 in accordance with the following provisions.
25 And in accordance with Article 7 Section 10f

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1 of the Constitution, the governor may direct
2 the commissioner of administration to reduce
3 any appropriation or allocation for the
4 executive branch of state government from
5 the state general fund and dedicated funds
6 including any which are constitutionally
7 protected or mandated by an amount not to
8 exceed five percent in the aggregate of the
9 total amount appropriated or allocated from
10 that fund for that fiscal year."
11 In effect what occurred was, during
12 the -- this -- the reduction, they looked at
13 the amount that we were budgeted and reduced
14 our cash by five percent. Which was allowed
15 in this statute. And they --
16 MR. IVEY:
17 The amount that DEQ was budgeted?
18 MS. ANDREWS:
19 Yes.
20 MR. BURNHAM:
21 For the fiscal year?
22 MS. ANDREWS:
23 Yes.
24 MR. BURNHAM:
25 Has that ever occurred before, to your

Page 10

1 knowledge?
2 MS. ANDREWS:
3 Never. It has never occurred before,
4 in this fund.
5 MS. ISAACKS:
6 And --
7 MS. ANDREWS:
8 We have -- we had did everything
9 within our power to fight, as you know,
10 sweeping of this fund and every other fund.
11 This one especially. And --
12 MR. MARCELLO:
13 I -- I respectfully beg to differ that
14 statement because of the comment, "As you
15 know". And I'm here to tell you, as we
16 know, as far as Louisiana Oil Marketers and
17 Convenience Stores Association is concerned,
18 we did not know this money was being swept.
19 MS. ANDREWS:
20 Well, we were, you know, pretty much
21 given a phone call from the budget office
22 about two weeks before this happened and it
23 was after our meeting, and told that this
24 was going to happen. And I'm, you know --
25 MS. ISAACKS:

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1 I guess it was after -- because I was
2 at -- a couple of us were at the committee
3 meeting. And so I'm guessing, from what I
4 understood you said, it was something the
5 governor did. And so was it done -- I guess
6 he has the ability to do it after the
7 committee --
8 MS. ANDREWS:
9 No. It was in that --
10 MS. ISAACKS:
11 -- approved it?
12 MS. ANDREWS:
13 -- it was in that committee meeting.
14 MS. ISAACKS:
15 Okay. Because --
16 MS. ANDREWS:
17 Yes.
18 MS. ISAACKS:
19 -- Todd and I were there.
20 MR. IVEY:
21 Yes. I watched it on video.
22 MS. ISAACKS:
23 And our -- our attorneys were there,
24 yes.
25 MR. IVEY:

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1 Yes. I thought it was shutdown in
2 committee.
3 MS. ANDREWS:
4 No. What was shutdown in committee
5 was the -- what they called the revenue
6 opportunity of \$8 million. But the cash,
7 this was not.
8 MR. MARCELLO:
9 Okay. But the question -- one of the
10 questions I have was, you used the term in -
11 - in your paperwork that said it was
12 appropriated or -- what was the other word?
13 I'm not being technical, but I --
14 MS. ANDREWS:
15 No. It's -- it's --
16 MR. MARCELLO:
17 Because this is not an appropriation
18 in my opinion by the state, this budget
19 amount. This is a tax. This is a fee that
20 we -- that we as marketers collect.
21 MS. ANDREWS:
22 So, "the governor may direct the
23 commissioner of administration to reduce any
24 appropriation or allocation for the
25 executive branch of state government from

1 the" -- "from the state general fund and
2 dedicated funds including any which are
3 constitutionally protected or mandated by an
4 amount not to exceed five percent in the
5 aggregate of the total amount appropriated
6 or allocated from that fund for that fiscal
7 year."

8 MR. MARCELLO:

9 So it -- and -- and I'm new to the
10 board and I'm asking --

11 MS. ANDREWS:

12 Well --

13 MR. MARCELLO:

14 -- a simple question as a marketer.
15 This -- I -- I don't -- in my opinion, it's
16 not appropriated or allocated. It's a --
17 it's a tax. It's a fee that we pay into it
18 as -- as directed.

19 MS. ANDREWS:

20 I'm going to have to refer to our --

21 MR. MARCELLO:

22 Yes.

23 MS. ANDREWS:

24 -- attorneys on this. I'm --

25 MR. THERIOT:

1 wouldn't want to mislead you to think that
2 there couldn't be challenges to what's been
3 done. Some people have challenged actions
4 taken. But I'm not -- here, we work -- you
5 know, we work for the governor and the
6 governor made the decision to move the
7 money. So --

8 MS. ISAACKS:

9 What fiscal year is it for?

10 MS. ANDREWS:

11 Fiscal -- it was done in fiscal year
12 '15. And it has been already --

13 MS. ISAACKS:

14 It's already been moved.

15 MS. ANDREWS:

16 -- swept and moved. Yes, it has.

17 MS. ISAACKS:

18 But the new budget starts July 1.

19 MS. ANDREWS:

20 Yes, it does.

21 MS. ISAACKS:

22 So that's about a week or so.

23 MS. ANDREWS:

24 Yes.

25 MS. ISAACKS:

1 It is -- all the monies -- even though
2 that it's paid in as a fee, all monies that
3 come to the trust fund are subject to
4 appropriation. We -- we can't use the
5 money, even though it's paid, unless it's
6 been appropriated. The legislature still
7 decides where the money goes, when the money
8 goes. And the governor has limited powers
9 to move money in a deficit situation, which
10 was what this statute was set up for. It
11 was set up for -- to give the governor
12 ability within existing appropriations to
13 move money. And that's what was done. He -
14 - he moved the five percent.

15 MS. ISAACKS:

16 So it was done in -- in that specific
17 meeting?

18 MS. ANDREWS:

19 Yes, it was.

20 MR. BURNHAM:

21 So, Perry, it's your interpretation
22 that the state was within their rights to do
23 it legally?

24 MR. THERIOT:

25 The statute says it. I would be --

1 A week and a half still left.

2 MS. ANDREWS:

3 Yes.

4 MS. ISAACKS:

5 Do you know if it was swept -- because
6 we were under the impression as the
7 appropriations chair (inaudible) that going
8 into the new session, we understood -- and
9 we were at that committee hearing and a few
10 others -- but that that was safe. Has that
11 one also been hit?

12 MS. ANDREWS:

13 I was at the same meeting you were
14 where he protected the revenue opportunity
15 of \$8 million.

16 MS. ISAACKS:

17 In the -- I'm talking about though the
18 2015-'16. I'm just asking, like, is that
19 something we don't know? If this is
20 reflective of 2014-'15? Is that the way I
21 understand it?

22 MS. ANDREWS:

23 I'm not sure I understand --

24 MS. ISAACKS:

25 The \$1 million.

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1 MR. THERIOT:
2 She's wondering whether that money was
3 allocated under next year's budget? In
4 other words, the sweeping was --
5 MS. ANDREWS:
6 It has -- it has not been given back
7 to us.
8 MS. ISAACKS:
9 No, no, no, no. Like --
10 MR. THERIOT:
11 No. I -- I know what she's trying to
12 say. I think --
13 MS. ISAACKS:
14 The \$1 million that was taken is for
15 this fiscal year, you said.
16 MS. ANDREWS:
17 Yes.
18 MS. ISAACKS:
19 So, okay, that was in February.
20 MS. ANDREWS:
21 Yes.
22 MS. ISAACKS:
23 Fast forward to the new session. Was
24 it in the budget bill for 2015-'16 that we
25 don't know of because --

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1 MS. ANDREWS:
2 No. This was -- this specifically was
3 done because there was a budget reduction.
4 It was a voidance of a budget deficit. And
5 there has to be certain things that occur.
6 Revenue estimating committee has to meet and
7 the revenues of the state have to hit
8 certain marks. And that was what occurred
9 that actually allowed the legislature and
10 the governor and the commissioner of
11 administration to do what they did.
12 MR. THERIOT:
13 I -- I think some of the confusion may
14 be that --
15 MS. ISAACKS:
16 I'm not confused.
17 MR. THERIOT:
18 -- next year's appropriation for the
19 budget that starts July 1st, that's in the
20 document that was just signed yesterday.
21 MS. ANDREWS:
22 That's House Bill 1.
23 MS. ISAACKS:
24 Right.
25 MR. THERIOT:

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1 Okay. That is not this million.
2 MS. ISAACKS:
3 I understand.
4 MR. THERIOT:
5 Okay. So --
6 MS. ISAACKS:
7 That's what I'm asking. Was it done -
8 - since we were kind of unaware of that, did
9 we miss something? Because our
10 interpretation was it went by okay this
11 session. Are we wrong in thinking that?
12 MR. THERIOT:
13 Well, and to tell you the truth, if
14 there's a deficit next year, this could
15 happen again.
16 MS. ISAACKS:
17 Sure. I understand.
18 MR. THERIOT:
19 Okay. And it's done when the revenue
20 estimating committee anticipates a budget
21 deficit. And it's not just this fund, but
22 I'm sure it's quite a few funds.
23 MS. ISAACKS:
24 I understand.
25 MR. IVEY:

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1 Is it voted on in committee or is it
2 just a decision by the governor?
3 MS. ISAACKS:
4 She said in committee it was done.
5 MS. ANDREWS:
6 It -- it's done in committee. But it
7 is actually through the statute, the
8 governor is allowed to direct the
9 commissioner. But it was done in -- in
10 committee.
11 MR. THERIOT:
12 And it is the first time I've seen it.
13 MS. ANDREWS:
14 Yes. I don't know that they've ever
15 actually done this.
16 MR. THERIOT:
17 The power has always been there.
18 MS. ANDREWS:
19 This -- I believe this one -- and the
20 reason it's never been done, I think this
21 went into effect in 2009, so it's -- this is
22 really, I believe, the first time it's ever
23 been put in place.
24 MR. THERIOT:
25 I haven't had a chance to look up the

1 actual amendments, but it was amended in
2 2009. So --
3 MS. ISAACKS:
4 No. We understand. We did -- we
5 understand. We did some legal research to
6 try and understand prior to. So we -- you
7 know, I think our question is just to check.
8 MR. BURNHAM:
9 Okay. Well, we'll move on. This is
10 certainly a point of contention for LOMA and
11 something that will need to be discussed
12 some more, I'm sure. And from my
13 standpoint, the setting of the precedent is
14 -- probably the most alarming or concerning
15 part of this, to me, is the potential for it
16 to happen over and over. So --
17 MS. ANDREWS:
18 I think we're all in agreement.
19 MR. BURNHAM:
20 Okay. Any other questions for Karyn?
21 (No response.)
22 MS. VIZINAT:
23 Don't forget to adopt the minutes.
24 MR. BURNHAM:
25 Oh, thank you very much.

1 of the audits.
2 This represents eight potentially
3 clean audits and five audits with potential
4 assessments, pending review, totaling
5 \$11,144.40.
6 Any questions?
7 (No response.)
8 MR. MORIN:
9 If not, we'll turn to the next page.
10 This page represents fiscal year '14 audits.
11 These are ten of the 34 audits that are
12 currently open. Nine of these audits -- for
13 nine of these audits, the fieldwork has been
14 completed and they're pending review. Six
15 are potentially clean audits. Two potential
16 audit assessments, totaling \$700.09. And we
17 have one potential credit, pending final
18 review, of \$3,292.22.
19 We have one last case at the top of
20 the -- this sheet. We've done our initial
21 review; however, the auditors are following
22 up on that case for -- for some items. So
23 the potential -- the findings and assessment
24 for that case could potentially be adjusted
25 or changed.

1 MS. ISAACKS:
2 I move to adopt the minutes.
3 MR. BURNHAM:
4 We need to adopt the minutes from the
5 February 12, 2015 meeting. I've got a
6 motion to adopt.
7 MR. MARCELLO:
8 Second.
9 MR. BURNHAM:
10 I have a second. Any objections?
11 (No response.)
12 MR. BURNHAM:
13 Thank you.
14 Okay. We'll move onto the auditor's
15 status report. Cy?
16 MR. MORIN:
17 Okay. At Mr. Milazzo's request, I've
18 provided this documentation for you to view.
19 Currently, we have 34 open audit
20 cases. If you look at the first page, this
21 represent 17 of the 34 audits that were
22 opened in fiscal year '15. This spreadsheet
23 shows the reason the audit was initiated,
24 the results of the audit, the potential
25 assessment, pending review, and the status

1 If you'll turn to page three. This
2 page represent three audits in fiscal year
3 '13. This is three of the 34 open audits.
4 One of these audits has been referred to
5 legal for collection for of \$4,016.58.
6 Legal filed a petition on 2/14/15. Legal is
7 currently moving forward to obtain a
8 judgment on this case. And fieldwork has
9 been completed for the other two audits. We
10 have one potential assessment of \$4,846.82,
11 pending final review.
12 If you'll turn the page. The last
13 page represents the remaining four audits
14 and -- and -- that are in legal that --
15 that occurred prior to fiscal year '13. It
16 also includes the fiscal year '13 audit that
17 I've already discussed that's in legal.
18 For the first case listed on here, a
19 consent agreement was initially obtained and
20 we've collected approximately half of this
21 assessment. Legal is currently reviewing
22 the file to determine the next course of
23 action. This is a -- it's a -- it's a case
24 that's very old and the business is no
25 longer operating as a motor fuel

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1 distributor.

2 The second case listed on here, we've

3 obtained a judgment for this amount listed.

4 Legal has mailed -- legal mailed a petition

5 for garnishment, totaling \$21,190.14. This

6 includes additional legal costs and things

7 like that. We've collected \$4,000 of this

8 assessment. And at this point, legal will

9 be referring the case to the Office of Debt

10 Recovery. We've discussed -- we discussed

11 that in the last meeting, the scenario of

12 the cases that we cannot collect on, will

13 be, you know, eventually forwarded to the

14 Office of Debt Recovery. So this may

15 potentially be one of those initial ones.

16 The third case listed on here, we're

17 waiting for the succession to be opened in

18 this case for the deceased owner. And legal

19 is going to continue to followup to see when

20 the succession is open so that we can file a

21 claim against the succession.

22 The case listed at the bottom by

23 itself, 3-08-005, legal has determined this

24 is uncollectible. They provided me with

25 bankruptcy papers a few days ago. So we

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1 will be moving to close this -- this case

2 as uncollectible.

3 And as you can see on this page here,

4 the current amount outstanding is

5 \$127,969.73. That includes the outstanding

6 fees and penalty amounts, as well as all of

7 the related court cost and -- and other

8 legal fees.

9 MR. BURNHAM:

10 Cy, this is -- this is all very good

11 data. Do you know what Johnny's primary

12 motivation was in asking for this? I -- I

13 remember hearing him talk about just wanting

14 to make sure that the evil-doers, so to

15 speak, that everybody was on a playing --

16 level playing field and that people who were

17 not correctly operating their stations were

18 being penalized. Was that his motivation

19 for pulling this together, or was there

20 something else that you're aware of?

21 MR. MORIN:

22 I mean, I think that's his primary --

23 MR. BURNHAM:

24 Yes.

25 MR. MORIN:

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1 -- motivation, yes. And I -- I think

2 he was wanting to see -- he was wanting to

3 see the picture -- you know, he was wanting

4 to have something to put his eyes on.

5 MR. BURNHAM:

6 And -- and you were -- you were kind

7 enough to list reasons for audit.

8 MR. MORIN:

9 Right.

10 MR. BURNHAM:

11 Do we --

12 MR. MORIN:

13 And this --

14 MR. BURNHAM:

15 Do we --

16 MR. MORIN:

17 This is --

18 MR. BURNHAM:

19 Do we do a certain amount of audits a

20 year?

21 MR. MORIN:

22 Yes. Well, currently --

23 MR. BURNHAM:

24 Are they randomly selected?

25 MR. MORIN:

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1 Currently, we're doing 18 a year.

2 MR. BURNHAM:

3 Okay.

4 MR. MORIN:

5 We had 18 for fiscal year '15. And I

6 -- I have the dedicated motor fuel auditor

7 and -- and he -- he does research. He

8 updates his -- his information on a very

9 regular basis. And based on that research

10 and -- and these various statuses, so to

11 speak, he decides which is -- is maybe the

12 best candidate for an audit, based on the --

13 on -- on, you know --

14 MR. BURNHAM:

15 Yes.

16 MR. MORIN:

17 -- if something is missing or -- or

18 it's delinquent or if we haven't done an

19 audit on them ever or, you know, like that.

20 MR. BURNHAM:

21 Okay.

22 MR. MORIN:

23 We are -- we are planning a meeting in

24 the near future to discuss some of the other

25 things that he had mentioned as far as our

1 research tools and really be able to --
2 being able to look at what's being reported
3 to the department as a big picture, you
4 know, and have tools that will give us a --
5 a big picture view of it more easily. And
6 then we can kind of, you know, drill down
7 and -- and find more problems.
8 MR. BURNHAM:
9 Are there any other questions for Cy?
10 (No response.)
11 MR. BURNHAM:
12 Okay. We'll move on to the trust fund
13 status report. Jeff?
14 MR. BAKER:
15 All right. Good afternoon. Please
16 refer to tab number five in your packets.
17 These are the figures for the third quarter
18 of fiscal year 2015. During the third
19 quarter of fiscal year 2015, the trust fund
20 received 230 applications, totaling
21 \$2,863,243. 212 applications were processed
22 for payment, during the fiscal quarter,
23 totaling \$2,789,780. And 33 applications
24 were returned with deficiencies. For sites
25 in the corrective action phase, the

1 trust fund cost control guidance document.
2 Numerous meetings have been held by the
3 staff, working to clarify language in the
4 document. The registered RAC community has
5 been contacted. And a number of individuals
6 have volunteered their time to participate
7 in document -- in guidance document
8 workgroups. Once the trust fund staff has -
9 - document revisions are completed, a draft
10 version of this document will be sent to the
11 workgroup. They will have an opportunity to
12 review the draft document and help provide
13 guidance relating to specific points of
14 concern and/or questions. The goal is to
15 clarify the document, guidance language
16 and/or to research and develop new or
17 revised unit rates.
18 Another point of interest, the trust
19 fund section is losing two of our
20 application reviewers. We are actively
21 interviewing and should have the positions
22 filled within the next few weeks.
23 Another point is, the Senate Bill 244
24 was passed by the legislative and is
25 currently awaiting the Governor's signature.

1 outstanding liability of corrective action
2 plan budget and estimated cost to reach
3 closure at the end of December -- I'm sorry,
4 it should be March 2015, was \$30,752,300.
5 The additional obligation recognized for
6 non-capped sites, plus the projected motor
7 fuel trust fund to environmental trust fund
8 transfer is \$41,230,800. At the end of
9 March 2015, the trust fund had 136 pending
10 applications to process, which had requested
11 amounts, totaling \$1,744,273. Of this
12 amount, the estimated requested obligations
13 related to cap budgets and closure cost
14 was \$1,090,735. If you'll look at the last
15 page of your packets, it's the legal sized
16 page, the number of trust fund sites that
17 received no further action thus far for the
18 current fiscal year was 23 sites. The
19 number of potential trust fund sites that
20 were reviewed and made eligible during the
21 current fiscal year was 28, representing 31
22 active incidents.
23 Just some points of interest. The
24 trust fund staff is continuing to work on a
25 draft of the next revision of the motor fuel

1 This bill increases the maximum dollars
2 available for eligible releases from one
3 million to one point five million dollars.
4 We are currently reviewing the potential
5 limitation of this bill as it relates to
6 sites with active releases, and Perry is
7 going to go over that a little bit farther
8 on in the -- in the discussion.
9 MR. BURNHAM:
10 Okay.
11 MR. BAKER:
12 And that completes -- concludes my
13 points. Does anybody have any questions?
14 MR. BURNHAM:
15 Very good.
16 MR. IVEY:
17 I -- I've got one. When -- I -- I
18 guess on the re-cap guidance document, when
19 ya'll send that out to the different RACs,
20 are you just sending it to the individual
21 RACs and then they're going to make comments
22 individually back, or is it going to be kind
23 of a group meeting on that, or how -- how
24 are ya'll handling that?
25 MR. BAKER:

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1 What we did was, about a month ago, I
2 sent out an email to all the RACs and asked
3 for volunteers --
4 MR. IVEY:
5 Okay.
6 MR. BAKER:
7 -- to participate in a workgroup. We
8 got back about seven or eight individuals
9 that have volunteered to participate in
10 that. When we finish with our draft
11 version, we're going to send it to that --
12 those eight first, and let them give us some
13 guidance. Part of this is also going to be
14 points of -- there are questions that we
15 have and we're going to put those on the
16 side of the document. We're documenting the
17 changes, but we're also putting comments out
18 to the side --
19 MR. IVEY:
20 Okay.
21 MR. BAKER:
22 -- justifying why those changes were
23 necessary. But there are also going to be
24 questions out there that will be going to
25 the workgroup, saying, "We" -- "We're not

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1 quite sure about this. Would you give us a
2 little bit better understanding about this?"
3 Once we kind of hash that out, if there are
4 any points where we need to get together as
5 a larger group, we will schedule those
6 meetings. And then beyond that point, once
7 -- once that workgroup comes to a consensus
8 that we have a good document, then we're
9 going to send it out to the board, the RAC
10 community and -- and all other stakeholders
11 for their comments.
12 MR. IVEY:
13 Okay.
14 MR. BURNHAM:
15 Any other questions?
16 (No response.)
17 MR. BURNHAM:
18 Okay. We'll move on to Perry with
19 third party claim status.
20 MR. THERIOT:
21 Well, before we get to the third party
22 claims, as we just talked about SB 244,
23 first of all, for those of you who haven't
24 met Chance, this is Chance McNeely, our new
25 Assistant Secretary for the Office of

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1 Compliance. He ask that we just put this
2 out here for you guys to take a look at and
3 to give us any feedback you might have.
4 As you know, the SB 244 increases the
5 amount of the availability of funds for
6 reimbursement to one and a half million from
7 one million. It does not make any reference
8 to how the department is to apply that
9 increase. So if you look in that little
10 handout I gave to you, the options, of
11 course, that are available are that the law
12 only applies to releases that are discovered
13 after the effective date of the statute.
14 That would mean that any new claim that was
15 filed after the 1st -- August 1st, which is
16 the prospective effective date of this bill
17 -- of this bill would be covered by the
18 higher amount. Anything before that would
19 be covered by the lower amount. I like to
20 call that the insurance company response,
21 because that's what you would get from an
22 insurance company. They would tell you, "We
23 don't insure stuff that's already broke."
24 Okay. That's one.
25 One is, it would apply to applications

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1 received after August 1st, 2015 for work
2 that was done after August 1st. And even
3 though the release was prior to August 1st,
4 the work was done after August 1st. So
5 that's a second option.
6 And then third, which I call the
7 benefit option, would apply to any work that
8 was done on any site that is less than two
9 years old. As I like to say, on your next
10 sheet, 30:2195.4 prevents the department
11 from using any funds for remediation
12 activity whether work is over two years old
13 with an effective date of August 1st. Two
14 years -- if we received an application
15 on August 1st, 2015 for work that was done
16 August 1st, 2013, it would be covered. If
17 it was done the day before, it would not be
18 covered.
19 MR. BURNHAM:
20 So the benefit option is the broadest
21 coverage that could be provided legally; is
22 that right?
23 MR. THERIOT:
24 That's right. That would be the
25 broadest. The narrowest would be, of

1 course, the one that deals with only
2 releases that -- that occur after August
3 1st. Those -- those are some of the
4 options. And some of the problems and --
5 that you have to look at under differing
6 sites -- okay, just a little example that I
7 stuck in here. We have -- as a practical
8 matter, we've got sites where one million
9 was paid. We closed the books at the trust
10 fund on that site. And usually, it's
11 accompanied by a demand letter from me,
12 telling the responsible party that we have
13 used up all of the fund, you need to finish
14 the job on your own. That's -- we've got a
15 few like that. And the question would be
16 whether those sites would be reopened. And,
17 of course, there's a lot of things to
18 consider when you look at that, has work
19 been done that was not approved by the ROG,
20 has work -- has the technology (inaudible)
21 changed, has -- has the responsible party
22 not used a qualified RAC, has the
23 responsible party not followed the cost
24 control document? All of those things come
25 to play in how you decide whether this --

1 this claim for those type of sites would be
2 covered. You've got sites right now that
3 are opened and still submitting applications
4 but are rapidly approaching the one million.
5 So same considerations would apply. They --
6 most have gotten letters from us telling
7 them, "You're approaching the one million
8 dollars." We have a system in place where
9 we send out that letter. The question would
10 be, do you wait on that site to do
11 additional work until after August 1st so
12 that you would have the additional five
13 hundred thousand, if that option is taken?
14 So -- and the last is the -- the most
15 problem would be sites that if we make a
16 decision one way to take sites that are up
17 to two years, would -- if they've done work
18 without those qualifications that we've
19 talked about, whereas there's been no ROG
20 meeting, no budget, no technology approval
21 and the RP has been doing the work
22 themselves. Okay. Will they be able to get
23 reimbursement for that is one of the
24 concerns that we have to take into account.
25 I have a little last page. It's

1 really the considerations. It's, you know,
2 your cost to the fund and the ability to
3 track the work that has been done for sites
4 that really weren't really in the system any
5 -- anymore. Documentation that might not or
6 might be available. Adherence to the cost
7 control document. Certainty. Whatever
8 position we should take, we want it to be as
9 certain as possible so that both our
10 auditors here and the people who are working
11 can be sure that they're either going to get
12 reimbursed or they're not. So that's --
13 fairness, I -- I think is a big thing that
14 we have to consider, because we want to be
15 fair to those -- you know, to the intent of
16 the law which was to increase the -- the
17 amount of the fund. Staffing demands. If
18 we all of a sudden get a whole bunch of old
19 sites that get dumped into the system,
20 that's going to have staffing size. And
21 then these old sites that were closed, we
22 have to consider whether they would be
23 eligible for a reopening.
24 So do ya'll have any questions about
25 that, that ya'll wanted to ask?

1 MR. BURNHAM:
2 Does the department have any
3 recommendations at this time, or -- or this
4 is all new to you to, right?
5 MR. THERIOT:
6 Well --
7 MR. BURNHAM:
8 I mean --
9 MR. THERIOT:
10 -- I mean, because there's always the
11 possibility of a veto, you don't do it until
12 the law gets closer to becoming in effect,
13 even though I don't believe that this will
14 be vetoed. So we're considering it and we
15 wanted the board's input. So any -- any
16 sort of input that you might have, feel free
17 to send it in to -- to Jeff and we'll
18 communicate it to the decision makers here
19 and -- and we'll move on from there, and we
20 will let you know what the decision is. But
21 we did want the board's input.
22 MR. MARCELLO:
23 I have a question and I don't know if
24 you've covered it. Under your option
25 section, it states, "applies only to

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1 releases occurring after August 1." But if
2 a -- if a -- if a release happens July 1,
3 and you -- and you apply August 1, which
4 takes precedence?
5 MR. THERIOT:
6 That -- that's an interesting
7 question. And I think, Jeff, you may have
8 pointed this one out. Jeff and I have
9 discussed whether it's -- mostly, we usually
10 -- our usual practice is to consider the
11 site from the date that the trust fund
12 receives the application, is our usual
13 practice. I would say that we would
14 probably stick with that practice, okay,
15 because it -- it does provide the certainty
16 factor that we're talking about. But there
17 are limits. I mean, suppose that the
18 release happened two and half years ago and
19 we get our notice August 1st but no works
20 been done. Do we -- does it -- does it
21 apply? That's one of the considerations you
22 could -- you're -- you need -- we need to
23 look at because maybe somebody might have
24 been considering the site as being not
25 eligible and then all of a sudden, they want

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1 to try and get the eligibility. I don't
2 think it's going to happen much as a -- you
3 know, because I think most sites have been
4 trying to get -- most sites try to get
5 eligibility as quick as they can. So I
6 don't know that it'll be as big a concern.
7 But it is a question to -- that we need to
8 look at, as to when we will date that --
9 those rights, because that's what it amounts
10 to is the right to reimbursement legally
11 vest at a certain time. Our current
12 practice that we use is to use the date the
13 request for eligibility is received.
14 MR. MARCELLO:
15 But on -- at present day rules that
16 you adhere to, what -- what's the practice -
17 -
18 MR. THERIOT:
19 We've never --
20 MR. MARCELLO:
21 -- what was the practice five years
22 ago?
23 MR. THERIOT:
24 We've never had a change in the amount
25 of coverage. It's always been one million,

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1 so it's never come up.
2 MR. MARCELLO:
3 But was there a time frame involved,
4 like there is now?
5 MR. THERIOT:
6 The only time frame contained in the
7 statute is we can't -- we're prohibited from
8 paying for remediation work where the --
9 where the -- the submission is more than two
10 years --
11 MR. MARCELLO:
12 Two years, okay.
13 MR. THERIOT:
14 -- after the work was done. That's
15 the current law. And -- and it's never come
16 up as to the increase. So you would get --
17 I don't know that it's going to come up too
18 much because remember, we're going from a
19 million to a million and a half. It would
20 only come up, I think, on a site where the
21 million is getting close or has been
22 reached. I -- I don't know that somebody
23 would've sat on a million dollar claim for
24 two -- for over two years. I mean, I -- I
25 just don't see that as being a possible

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1 thing. I guess it could happen. But, you
2 know, I think that it's a -- would be a
3 rarity. And I think that the department
4 will usually try and stick to it's current
5 practice in that if we receive an
6 application that's -- that'll be the date
7 that sets the rights, I think.
8 MR. MARCELLO:
9 Right.
10 MR. THERIOT:
11 Unless we get something way out in
12 left field.
13 MR. IVEY:
14 So if -- if you went with the option
15 of -- of, I guess, how it is right now, with
16 the two year window, what -- I guess -- I
17 guess I'm not quite following that.
18 MR. THERIOT:
19 Yes. Okay. When -- currently, the
20 two year limitation applies to work. We do
21 have sites that are more than two years old
22 where investigation is being done and hasn't
23 been completed. They -- the two year clock
24 starts to work from the -- when the
25 remediation work begins. Investigations, we

1 have some that are exceedingly old. We
2 would like to remedy that situation for the
3 future. But we currently gate from the time
4 remediation work takes place with what is
5 the two year frame provided by the statute.
6 MR. IVEY:
7 Yes. So -- so if the department left
8 it just like it is with the two year deal,
9 if you receive a package, no matter what --
10 what the time frame is, whether it was
11 before or after August 2015, if it was
12 within the two years, you could pay that if
13 you have the proper documentation in there,
14 which might be approval from the team
15 leader? It could mean that you required ROG
16 approval. You don't have that. So you
17 might not pay it.
18 MR. BAKER:
19 That's correct.
20 MR. IVEY:
21 I mean, you could go that route?
22 MR. BAKER:
23 That's correct. That -- and that's
24 the --
25 MR. IVEY:

1 MR. BAKER:
2 If it had what it was suppose to have
3 --
4 MR. IVEY:
5 -- then you would pay it?
6 MR. BAKER:
7 If it --
8 MR. IVEY:
9 It would be -- it's the same way it is
10 now. If you receive something now that
11 doesn't have team leader approval, doesn't -
12 - it -- they did use a qualified RAC, you
13 don't pay it. You kick it back now.
14 MR. BAKER:
15 That's right.
16 MR. IVEY:
17 It would be the same thing.
18 MR. BAKER:
19 Exactly.
20 MR. IVEY:
21 Yes. Okay.
22 MR. BURNHAM:
23 Any other questions?
24 (No response.)
25 MR. BURNHAM:

1 That would be the easiest route.
2 MR. BAKER:
3 That's the logistics -- that's the
4 logistics of this. And that's the concern
5 of going back two years is that, when -- if
6 -- if this site is beyond the million
7 dollars and now all of a sudden it's asking
8 for reimbursement, at that point, when they
9 hit the million dollars, it's no longer
10 under the purview of the trust fund where
11 every dollar that gets spent has to be
12 approved and -- and they're following
13 guidelines, they're keeping track of their
14 documentation, it's being done by -- by a
15 certified RAC, all the work being done by a
16 certified RAC, everything is as it should
17 be. Once it hits the million dollars, it
18 doesn't follow those rules as strictly. And
19 what the concern I have is, is that once
20 those -- those applications start coming in,
21 we're going to be denying some stuff because
22 it doesn't have what it's suppose to have.
23 MR. IVEY:
24 Sure. But if -- but if it did have
25 what you required --

1 Perry, was there anything else on
2 third party claims?
3 MR. THERIOT:
4 Yes, there is. And we need to get to
5 executive session real quickly to go over
6 some of the things that -- in the third
7 party claim provisions that deal with
8 settlements and the like.
9 MR. BURNHAM:
10 Okay.
11 MR. THERIOT:
12 So we should go into executive
13 session.
14 (The board went into executive session.)
15 (The meeting re-convened.)
16 MR. BURNHAM:
17 Okay. Thank you all. Is there --
18 we're down to item number seven on our
19 agenda. Is there any other business to
20 discuss? Anyone?
21 MR. MARCELLO:
22 I humbly ask for two minutes.
23 I -- I'm looking for something in the
24 -- in the minutes of the last meeting and I
25 would like to ask a question, if I could

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1 find it.
2 MR. BURNHAM:
3 Okay.
4 MR. IVEY:
5 While he's looking that up, Jeff, when
6 do we need to have an answer to you on, I
7 guess, our opinion on how to handle the
8 bill, the one point five million?
9 MR. BAKER:
10 As soon as you can. I mean --
11 MR. IVEY:
12 Okay. Is there a deadline?
13 MR. BAKER:
14 We haven't --
15 MR. IVEY:
16 Because I'm sure LOMA is going to want
17 to --
18 MS. ISAACKS:
19 Can --
20 MR. IVEY:
21 -- make a response to it.
22 MR. BAKER:
23 We haven't talked about a deadline.
24 But, I mean, you know, in the next week or
25 so would be great.

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1 MR. IVEY:
2 Okay.
3 MR. BURNHAM:
4 Natalie, can you spearhead --
5 MS. ISAACKS:
6 Can you email it to me --
7 MR. BAKER:
8 Sure.
9 MS. ISAACKS:
10 -- the -- whatever you handed out?
11 MR. BAKER:
12 Absolutely.
13 MR. ISAACKS:
14 Just to have the notes or --
15 MR. MARCELLO:
16 Basically my question -- and I wanted
17 to go on record again opposing the
18 quote/unquote sweep. And one of the
19 concerns I have is the department's lack of
20 -- of communication with the Louisiana Oil
21 Marketer's and Convenience Store
22 Association. I was looking for the previous
23 conversation in the last minutes. And if
24 you -- I'm looking on page 47 where I know
25 we spoke of it. And -- and I'm sure we

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1 spoke of it more in this report -- in these
2 minutes. But we talked about -- Mr. Kerry
3 Hill talked about the consensus of our
4 organization in reference to a sweep and so
5 forth and I -- I think the -- the -- the --
6 the Department of Environmental Quality
7 Board knew of our concern about the sweep
8 and this report that we got is dated June 5,
9 and I would -- the -- and when I use the
10 date June 5th, I mean the report that was
11 drawn up that Ms. -- Ms. Andrews spoke of.
12 So the sweep had to take place prior to
13 that. Which means that gave the department
14 a few weeks to let us know out of respect,
15 if you will, that a sweep was taking place.
16 And it didn't happen. So my only request
17 is, we -- we work very, very well with the
18 Department of Environmental Quality and I --
19 I'd like to see us work a little closer, as
20 we have in the past. We have sought legal
21 counsel on -- on this sweep. And I'm here
22 to tell you, we all know about the Louisiana
23 Office of Probation and Parole who has been
24 swept, filed suit, won their lawsuit, and
25 now they have a judgment. Now, how do you

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1 get paid on a judgment? The legislative has
2 to appropriate the money. So we can
3 quote/unquote forget about this money that's
4 been swept, because I don't see us getting
5 it back. But in the future, in order to
6 protect the interest of the -- of all
7 distributors of -- of petroleum products
8 that collect this money, I'd like to see
9 when -- when -- when things like this
10 happen, our -- our -- our association gets
11 notified. Thank you.
12 MR. BURNHAM:
13 Okay. Any other comments or business?
14 (No response.)
15 MR. BURNHAM:
16 All right. Thank you all for coming.
17 With that, I'll ask for a motion to --
18 MR. MARCELLO:
19 I move.
20 MR. BURNHAM
21 -- close our meeting? Second?
22 MR. FULTON:
23 Second.
24 MR. BURNHAM:
25 Any opposed.

1 (No response.)
2 MR. BURNHAM:
3 Thank you. Our meeting is adjourned.
4 THE MEETING ADJOURNED AT 2:21 P.M.
5 * * * * *

1 CERTIFICATION
2 I, Lori B. Overland, Certified Court Reporter in
3 and for the State of Louisiana, as the officer
4 before whom this testimony was taken, do hereby
5 certify that the above referenced individual to whom
6 oath was administered, after having been duly sworn
7 by me upon authority of R.S. 37:2554, did testify as
8 hereinbefore set forth in the foregoing pages, that
9 this testimony was reported by me in the stenomask
10 reporting method, was prepared and transcribed by me
11 or under my personal direction and supervision, and
12 is a true and correct transcript to the best of my
13 ability and understanding; that the transcript has
14 been prepared in compliance with transcript format
15 guidelines required by statute or by rules of the
16 board, that I have acted in compliance with the
17 prohibition on contractual relationships, as defined
18 by Louisiana Code of Civil Procedure Article 1434
19 and in rules and advisory opinions of the board;
20 that I am not related to counsel or to the parties
21 herein, nor am I otherwise interested in the outcome
22 of this matter.

23
24 Lori Overland C.C.R.
25 # 97083

1 REPORTER'S PAGE
2 I, Lori B. Overland, Certified Court
3 Reporter, in and for the State of Louisiana, the
4 officer, as defined in Rule 28 of the Federal
5 Rules of Civil Procedure and/or Article 1434(b)
6 of the Louisiana code of Civil Procedure, before
7 whom this sworn testimony was taken, do hereby
8 state on the Record
9 That due to the interaction in the
10 spontaneous discourse of this proceeding, dashes
11 (--) have been used to indicate pauses, changes
12 in thought, and/or talk overs; that same is the
13 proper method for a Court Reporters's
14 transcription of proceeding, and that the dashes
15 (--) do not indicated that words or phrases have
16 been left out of this transcript;
17 That any words and/or names which could not
18 be verified through reference material have been
19 denoted with the phrase "(inaudible)."

20
21 Lori Overland, C.C.R.
22 # 97083
23
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25

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