

1 BEFORE THE STATE OF INDIANA

2 FINANCIAL ASSURANCE BOARD

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PUBLIC MEETING OF AUGUST 9, 2018

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9 PROCEEDINGS

10 before the Indiana Financial Assurance Board,
11 Mark Ehrman, Chairman, taken before me, Lindy L.
12 Meyer, Jr., a Notary Public in and for the State
13 of Indiana, County of Shelby, at the Indiana
14 Government Center South, Conference Center,
15 Rooms 4 and 5, 402 West Washington Street,
16 Indianapolis, Indiana, on Thursday, August 9,
17 2018 at 1:32 o'clock p.m.

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21 William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
22 12922 Brighton Avenue
Carmel, Indiana 46032
23 (317) 848-0088

1 APPEARANCES:

2 BOARD MEMBERS:

3 Mark Ehrman, Chairman

Amy Smith

4 Kim Logan

Kim Forster

5 Greg Cobb

Tom Navarre

6 Sanka Prasad

7 Nancy King, Legal Counsel

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IDEM STAFF MEMBERS:

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Douglas Louks

10 Colleen Rennaker

Kim Diller

11 Angela Stewart

Janet Pittman

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13 PUBLIC SPEAKERS:

14 Christopher Braun

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1 1:32 o'clock p.m.
August 9, 2018

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3 CHAIRMAN EHRMAN: Call to order.

4 Call to order, please. Welcome, everybody, to
5 the Financial Assurance Board meeting here on
6 Thursday, August the 9th, 2018 meeting, Indiana
7 Government Center, Rooms 4 and 5. Thanks for
8 your participation, and thanks, everybody on the
9 Board, for your attendance and participation.

10 And I think we have a quorum here today.

11 MS. KING: Yes.

12 CHAIRMAN EHRMAN: I think we do. All
13 right.

14 Kim, can you start off with introductions,
15 please?

16 MS. LOGAN: Yes. Kim Logan, from the
17 State Treasurer's Office.

18 MR. FORSTER: Kim Forster,
19 representing the public.

20 MR. COBB: Greg Cobb, representing
21 independent petroleum and market wholesale
22 distribution.

23 CHAIRMAN EHRMAN: Mark Ehrman,

1 Marathon Petroleum, representing supply side.

2 MS. KING: Nancy King. I'm counsel
3 for the Board, from IDEM.

4 MS. SMITH: Amy Smith. I am IDEM
5 proxy.

6 MR. NAVARRE: Tom Navarre,
7 representing convenience stores.

8 MR. PRASAD: Sanka Prasad,
9 representing environmental consultants.

10 CHAIRMAN EHRMAN: Okay. Thank you,
11 guys.

12 The first order of business is to approve
13 to March 8th, 2018 Board meeting notes. This is,
14 of course, today our second meeting in 2018. Do
15 I hear a motion to adopt?

16 MS. LOGAN: Motion to adopt.

17 MR. COBB: Second.

18 CHAIRMAN EHRMAN: Second? Okay. The
19 notes have been approved.

20 Next is the Fund Administrator's Report,
21 please.

22 MS. SMITH: Kim Diller, IDEM's Chief
23 Financial Officer, will give the Fund

1 Administrator's Report today.

2 MS. DILLER: All right. Good
3 afternoon. I'm Kim Diller. I'm the Chief
4 Financial Officer for IDEM, and I'm going to
5 start with the fact that the statute requires an
6 annual report to the Board every year before
7 September 1st. In this report we have to include
8 a financial statement that gives information
9 about the management and the oversight for the
10 fund.

11 Information that needs to be included is
12 the amount of money currently in the fund,
13 estimates of future revenue, amount of money
14 obligated for corrective actions and third-party
15 liability claims, an overview of the fund claims
16 process, and a report of the number of claims
17 made against the fund that were approved and
18 denied during reporting year.

19 So, I'm going -- wow, that's small. Okay.
20 So, I'm going to start with the over -- the
21 overview and the management and the oversight of
22 the fund. Looking at our budget performance for
23 the last fiscal year ending June 30th, our

1 overall appropriation was 54.4 million dollars.
2 We spent 47.2 million, with 43.3 million of that
3 being in claims, and that left a budget balance
4 of 7.1 million dollars, and we'll get to later of
5 why we did have money left over in our budget, in
6 our appropriation.

7 The administrative costs is a percentage
8 by how we have to -- we can only spend up to 11
9 percent of the prior year's revenue, so we spent
10 7.6 percent, so we came under that 11-percent
11 cap.

12 For revenue, we saw 46.1 million dollars
13 in revenue this year, and our ending fund balance
14 for the year was 86.3 million dollars.

15 Anybody have any questions about this
16 before I move on?

17 (No response.)

18 MS. DILLER: So -- oh, that's not
19 very good either. So, we'll know for next time
20 to make this a little bigger. So, this chart --
21 hopefully you have it in front of you -- shows
22 the revenues versus the claims payout for 2018
23 and for Fiscal Year 2017.

1 You will see here that last year our
2 revenue was slightly over our payout in claims of
3 1.3 million dollars. This year we were trending,
4 and if you remember back in March when I was
5 here, we were trending -- I think that revenue
6 was going to be under our payouts.

7 Our claim payout process slowed down
8 drastically starting in April, and Doug will
9 speak more about that later, but because of that,
10 we ended up with excess in our appropriations, so
11 we ended up with a little bit more revenue than
12 the payout for claims. Had we not done that, it
13 probably would have been the opposite direction.

14 Revenue forecasts, so these are inspection
15 fees, and you can see it kind of goes all over
16 the place, but we did see a pretty dramatic
17 reduction this year in revenues, and it was due
18 to a couple of factors, but mostly it's because
19 the volume of sales is down, and I think you saw
20 that before, earlier in the year, and it
21 continued to trend that way.

22 Especially in the special fuels, because,
23 you know, even though there was a tax increase,

1 this fund didn't get a portion of that tax
2 increase; we still got our penny per gallon. So,
3 revenues are down. I don't expect that they'll
4 be coming back up, and that's pretty much where
5 we are.

6 So, that is the -- I think that's the
7 financial portion of this presentation. Do you
8 guys have any questions about numbers?

9 MR. COBB: Kim?

10 MS. DILLER: Yeah.

11 MR. COBB: What was the amount of the
12 special fuels? Did you isolate --

13 MS. DILLER: Uh-huh. It went down by
14 13 percent.

15 MR. COBB: How much?

16 MS. DILLER: Thirteen percent.

17 MR. COBB: Thirteen percent?

18 MS. DILLER: Uh-huh.

19 MR. COBB: Okay. And then on the
20 payouts, why the sudden drastic stop in April,
21 May and June?

22 MS. DILLER: So, the staff is working
23 on a stronger validation process that Doug is

1 going to talk to you more about, and I'll let

2 him -- I won't steal his thunder.

3 MR. COBB: Okay. But can we assume,
4 then, that future months will be much larger than
5 historical --

6 MS. DILLER: Yes --

7 MR. COBB: -- because of --

8 MS. DILLER: -- for a catchup,
9 uh-huh.

10 MR. COBB: -- not paying these out?

11 MS. DILLER: Uh-huh, yes. Yeah,
12 they'll get paid. It's just it's not -- it just
13 didn't happen right away.

14 MR. COBB: Okay.

15 MS. DILLER: I think one thing that I
16 did leave out, and I wanted to update you guys on
17 the Speedway payment. We did make another
18 9.1-million-dollar payment at the beginning of
19 July. I think we'll have another -- I think it's
20 1.6 million dollars left of that kind of
21 outstanding liability that was due to them, and
22 then that will get paid next fiscal year.

23 MR. COBB: Okay. So, our really true

1 balance is more like 76 million verses 86

2 million --

3 MS. DILLER: Yeah, yeah.

4 MR. COBB: -- not counting the --

5 MS. DILLER: Yeah, because that came
6 out right away.

7 MR. COBB: Okay.

8 MS. DILLER: Okay. All right. Well,
9 with that, I will turn it over to Doug Louks.

10 MR. LOUKS: Hello, everyone. Doug
11 Louks, the UST Branch Chief. I'm going to go
12 through some of the updates for the ELTF program
13 through IDEM.

14 We'll start with -- this slide actually is
15 not from us. This is the Brownfields program for
16 the Posey Initiative. It's a really good
17 program. We're taking money from the ELTF and
18 getting it into the hands of the IFA that's
19 utilizing it for orphaned and abandoned sites
20 where we cannot locate responsible parties or
21 their unregulated tanks, but there's still a
22 problem. It's been a really positive impact, I
23 feel, over the last year or so that we've been

1 doing this. I encourage you all to read -- I
2 think, Chris, you wrote about that.

3 MR. BRAUN: (Nodded head yes.)

4 MR. LOUKS: Chris wrote a pretty
5 extensive article talking about the use of the
6 money and, you know, revitalization, and what
7 you're seeing is some of these smaller
8 communities were able to use this funding.

9 So far, 50 sites have been approved in
10 funding for 40 communities, covering 35 different
11 counties. Total money obligated is almost ten
12 million. Disbursed to date so far is about 7.2.
13 The average project for this is about \$200,000.

14 We had some highs and lows. Obviously
15 some are easier than others. Sometimes they get
16 in there and I -- at one point, I think they had
17 found four tanks that they didn't know were
18 there. They went in to pull two and found four
19 more. That's just kind of the stuff that
20 happens. Some of the contractors, you know, have
21 been out there and seen this stuff as well.

22 We've issued -- they've gotten 15 NFA's
23 issued, one Site Status letter, and they're

1 currently processing six more NFA's and one more
2 Site Status letter. So far, there have been 41
3 UST's removed. Two had to be closed in place for
4 structural reasons. We've also been able to get
5 seven fuel oil UST's and a couple of hydraulic
6 lifts removed.

7 I think the impacted soil and liquid, I
8 think, are pretty impressive numbers, so fourteen
9 and a half tons -- fourteen and a half thousand
10 tons of impact soil have been removed and
11 disposed of, as well as over 110,000 gallons of
12 liquid removed from the tanks and disposed of.
13 So, really positive, and I think it's a good use
14 of these resources.

15 New claims applications. So, the new
16 forms must be used for claims received on or
17 after September 1st, 2018. That's a pretty
18 typical thing. We did the update and made sure
19 that all of the rates were correct, which didn't
20 change -- we'll get to that in a minute -- as
21 well as fixing a couple of bugs.

22 The ELTF Phased Application, for costs
23 that are incurred after January 1 of 2008, it is

1 mandatory. For costs that are incurred before
2 January 1 of 2018, it is still optional.
3 However, if costs -- if you're submitting a claim
4 for costs incurred both before and after
5 January 1st, use the ELTF Phased Application to
6 take into account both of those sets.

7 Personnel rates did not change this year.
8 The index remained the same, so that will be a
9 pretty easy carryover.

10 I wanted to re-emphasize that we're
11 continuing to e-mail letters and make sure that
12 all of the e-mail addresses and contact
13 information is accurate. We're still getting a
14 lot of bouncebacks, and, you know, we don't want
15 to have to mail these. We will continue to mail
16 them if we get the bouncebacks, but we really
17 just want to get them e-mailed out. It's a lot
18 easier for, I think, everybody involved.

19 ELTF Scopes of Work. This is -- I think I
20 talked about it in the last meeting as well. We
21 have a Scope of Work document. It directly
22 mirrors that ELTF Phased Application. This works
23 for two reasons: Getting preapprovals, but also

1 to give -- to make the cost-effectiveness

2 determination required under the rule.

3 And when we're doing that

4 cost-effectiveness determination on CAP's and

5 CAPA's, you'll submit the scope of work with the

6 three remedial activities that are listed in the

7 FSI. We may ask for another, to add a fourth, if

8 we want to just see how -- you know, we want to

9 ask, "Well, what would it cost if you did this?"

10 or we may substitute, you know, what we would

11 like to see scoped out as well as the two of your

12 other remedies.

13 Once you submit those to Jill, she will

14 review them and get those finalized. There's the

15 option to submit them just once and work for both

16 cost effectiveness and preapproval. So, if

17 you're submitting these for a CAP and you want to

18 get those costs preapproved, we'll do that all at

19 the same time.

20 Preapproved cost, of course, means we're

21 already guaranteeing we're going to pay that.

22 We're allotting it. You're saying it's going to

23 cost \$250,000, and we agree that that's cost

1 effective. We're going to pair that with the
2 ELTF claims application and everything's going to
3 go right through the review process. We're just
4 going to be verifying invoices. Jill Berry is
5 the contact for that. I encourage you to reach
6 out if you have any questions.

7 The Rule Amendments, the rules approved.
8 The new rule was approved on July the 20th. I
9 have it quoted and approved, as the A.G. didn't
10 actually sign it. It lapsed out on time. They
11 have, I believe, 45 days to put a signature on
12 it. If it goes beyond the 45 days, it's deemed
13 approved, so that's what happened in this case.

14 Normally what we see is about a
15 six-weeks -- I'm sorry -- six-week time lag from
16 the time the Attorney General approves it until
17 the rule becomes effective and it's published, so
18 we're looking somewhere around early to
19 mid-September. If -- we will try to get that
20 announcement out as soon as we can. For those of
21 you who want to keep track of it yourself, keep
22 updated on the Indiana Register and they'll post
23 it in there.

1 What this basically means is the technical
2 milestones are still required up until the rule
3 becomes effective. We still have to enforce
4 those. But as soon as -- so, we're expecting a
5 large influx of claims sometime in September,
6 when the technical milestones are removed,
7 because it will allow people to submit for costs
8 prior to having corrective action approval, prior
9 to having site characterization.

10 The ELTF claims section itself, there are
11 a couple of changes I want to highlight. The
12 first one, we have a new Section Chief, Colleen
13 Rennaker. I think some of you have seen her.
14 She's done a couple of presentations here. Over
15 the last year or so, she's been a branch-wide
16 specialist, a senior environmental manager
17 working with our other two branch specialists,
18 Jay Col -- or Jay and Bobbie.

19 She has been working on the validation
20 project with Bobbie and been integral in that.
21 She's also been really involved with Jay in
22 updating our forms and some of our technical
23 stuff, as well as helping the whole Office of

1 Land Quality with process improvement. We're
2 really excited to have her on board. She just
3 started about a week and a half ago, so give her
4 time to get acclimated a little bit more.

5 We are reorganizing the branch to try to
6 be a lot more efficient in how we provide our
7 service, and with that, we have changed our name
8 of ELTF Claims Section to the UST Operations
9 Section. ELTF claims is going to become a part
10 of kind of these multibranch-wide services that
11 apply to the whole -- to both the UST compliance
12 and LUST, and there's a lot of overlapping, so
13 we're trying to seam this all together, so that
14 we can create this cohesive unit that allows for
15 communication among the whole branch.

16 Eventually the other functions that are
17 going to be moved over there are notifications
18 and registration, release reporting, as well as
19 closures, and they're all going to keep it
20 together, and that's -- it kind of seems to make
21 sense, especially when you're talking about owner
22 validation. It will be, you know, very much
23 cradle to grave, all in one, and that will be UST

1 Compliance doing compliance, it will leave LUST
2 doing corrective action.

3 We're also in the process of developing a
4 new database. I think I loosely addressed it the
5 last time. I couldn't really say a whole lot,
6 because we had not signed any contracts or didn't
7 quite have those memorandums of understanding
8 yet. We have both of those, so I can talk about
9 it a lot more.

10 We're in the process right now of doing
11 what's called detailed information gathering,
12 which if any of you have done that, it's
13 horrible, very terrible. You don't know how
14 intricate these things are, and it -- Jay likes
15 it, but it's not for me.

16 (Laughter.)

17 MR. LOUKS: So, we're in the process
18 of developing the back-end database first, and
19 what's going to come after that is there's going
20 to be, a few -- a couple of months after that,
21 then we're going to have a forward-facing view,
22 and that forward-facing view is with a
23 cooperative partnership with the Secretary of

1 State's Office, and it's going to be coming after
2 the end of this quarter.

3 So, some of you that have businesses that
4 utilize that will be very familiar with it, and
5 they're going to be our -- they're going to be
6 the face of that, and it's going to be right into
7 the back-end database.

8 Part of that is we are cleaning up data.
9 We have a lot of data discrepancies, 30 years
10 of -- well, 20 years of paper, for one thing,
11 but, you know, another ten years of -- you know,
12 we have a lot of data coming in and out of this
13 agency, and we're trying to validate that in
14 order to make this database function. We have to
15 make sure that everything matches all of the way
16 through the system. Otherwise, when you put
17 something into that portal, it's not going to
18 accept it. So, we're doing the front end work
19 right now to make sure that everything goes
20 smoothly.

21 Right now, we're looking to have UST
22 notifications, registration, and closures
23 finalized by the end of this year and utilized

1 in-house, and then a few months after that,
2 between two and four months after that, we hope
3 to have it forward facing for public use. Then
4 after that, we will have LUST corrective action.

5 Again, we hope to have that internally
6 finished sometime early to mid-spring, maybe
7 early summer, if -- hopefully not early summer,
8 but sometime in the spring, and then ELTF claims
9 will feed off of that and be the last.

10 And we're hoping to have that forward
11 facing by next fall, the end of next summer,
12 early fall, so August, September. That is our
13 deadline or our scope right now. If something
14 happens, we may have to push that out a little
15 bit more, but that's what we're pushing for right
16 now.

17 Because we're making such a dramatic
18 change, we were able to cooperate with the EPA
19 and get what's called an e-enterprise trade-off.
20 EPA is providing an incentive to state agencies
21 to create these efficiencies, whether that be
22 something new technologically or just, you know,
23 full process improvement.

1 And they were able to pull back on some of
2 our grant commitments in order to apply those
3 resources to development of this database and
4 other projects. So, we're -- this was actually
5 the first one done in Indiana for any of the
6 programs, whether that be, you know, in either
7 air or water as well, so we're pretty excited
8 about it. And I believe it was the first one
9 that the UST program has done, most certainly in
10 Region V, and I believe in the nation.

11 We'll go over some of the claims data.
12 This kind of mirrors what Kim was saying, with
13 the downward trend in April and May for the
14 amount reimbursed. That is directly tied to the
15 validation process. I'm not going to go in-depth
16 into the validation process, because Colleen's
17 going to come in and talk about that, but that is
18 the direct result of that.

19 You can see in June the numbers were
20 starting to pick back up because we got through
21 our first round, and we're already starting to
22 see duplicates; in other words, claims that have
23 already been validated are showing back up again,

1 which means we're having far less validation that
2 we need to do on these incidents.

3 Number of claims. Again, this directly
4 matches. I want to highlight March 2018. So, if
5 you look at the review time, you see an uptick in
6 March. You also see an uptick in the amount of
7 claims received. Very poor timing, and I will
8 explain that in a little bit. The review time
9 has been fairly stable through that period until
10 March, and that's when we got kind of slammed a
11 little bit, and we're still trying to catch up,
12 but we're getting through those.

13 Now, final approval, that's me. Final
14 approval, that's my number, because I'm the one
15 that's going through every one of these
16 validations and making the final determination as
17 to whether or not they are good to go or whether
18 or not I need more information and whether or not
19 something needs to be denied. So, again, the
20 review time has been fairly stable. It's mostly
21 been related to me getting into these things
22 because they take time.

23 Here you see this is, you know, the

1 overall average. The logarithmic trendline there
2 shows that we're already starting to level out
3 and come back down. This -- the co-relation of
4 coefficient is actually below .5, which is
5 relevant, but not horribly relevant, meaning that
6 it's showing an anomaly. This is something
7 that's happened that's directly related to a
8 specific event and not actually the trend of the
9 work. And I had done a chart -- I didn't have
10 time to put it in here, but when I had done it
11 just for my review and approval, that co-relation
12 of coefficient was .6. Over the last six months,
13 that co-relation of coefficient was .8, which
14 shows a very, very strong statistical tie to it
15 being related to that, which is further
16 supportive of it's the validation process.

17 Here are some of the causes of the delay.
18 Again, timing. That March -- we got hit in
19 March. I also hired a new staff member that
20 required training in the month of March, so I
21 lost one of my most senior reviewers to training
22 for, you know, several weeks during that period,
23 and while she's training, it's one -- that means

1 it's one or two less claims a day that she's able
2 to process, and over all of the month that really
3 didn't help things.

4 Another cause is we've shifted in service
5 and how we're providing that service, starting in
6 January, when I took over the management of the
7 section. As opposed to doing administrative
8 denials or denying claims outright, we were
9 allowing amendments, reaching out to consultants
10 and owners and saying, "Look, give us -- we need
11 this, we need a new POA. You know, you're -- can
12 you fix this for us? Give us this backup
13 documentation." It doesn't seem like much, but a
14 day or two here, a day or two there really adds
15 up, and it starts to add to that date.

16 So, the good news is -- and the hope was
17 we were trying to prevent resubmittals, so even
18 if we could have reviewed the claim and got it
19 out to you in 25 days, would you rather have had
20 that and had major parts of it denied, or would
21 you rather me wait seven or eight days, get the
22 backup documentation, and have you not have to
23 resubmit it?

1 To me, I think that's a no-brainer, and
2 even though the numbers go up, it's saving us
3 time in the long run, it's saving us resources in
4 the long run, and I think it's going to save
5 consultants and owners resources in the long run
6 as well. So, that is something that we're going
7 to continue to do. I do think that that's a good
8 thing.

9 The main cost is the Party Validation
10 Project. So, this is a question. I'm going to
11 refer to it a couple of times. Greg, you asked
12 this question: What are we doing wrong in this
13 state? Well, this is one of the things that we
14 were doing wrong. I'm going to invite Colleen to
15 come up and talk a little bit about the project
16 now.

17 MS. RENNAKER: Hi. My name is
18 Colleen Rennaker. I'm the new Section Chief of
19 the UST Operations Section, and I'm just going to
20 do a little bit about the Validation Project that
21 we've been working on and this process that has
22 been taking up some of our time in our section.

23 So, this Validation Project began around

1 mid-March, where we want to review all of the
2 open incidents within Indiana. We want to
3 validate and verify who the responsible party is
4 for these releases, who the liable party is, the
5 eligible party.

6 We want to look at the consistency in the
7 submissions to IDEM and to the ELTF Section, and
8 we're looking at the invoicing. With each of
9 those pay requests that come in, there's
10 invoicing, and we're looking at the consistency
11 with those as well.

12 Since we started this in mid-March we
13 started with these ELTF-eligible incidents, which
14 we had a workload of 650 to get through. We came
15 up with a prioritization of these. We started
16 with these incidents with claims in-house on a
17 first-in-first-out basis. As claims come
18 in-house, we're doing this validation process,
19 and as more claims come in, we will shuffle those
20 through as well, so that we can get these claims
21 that have been in-house processed and hopefully
22 paid.

23 We then are planning to move on to the

1 other ELTF incidents, those with ELTF
2 eligibility. We'll be moving on to the
3 noneligible LUST incidents. We -- there is the
4 anticipation that they may become ELTF eligible
5 in the future, so we want to make sure that we
6 can get those validated as well.

7 We also plan on working on other active
8 UST sites, all of these facilities that we
9 regulate through our UST Compliance Section, and
10 then we also will be doing our inactive incidents
11 within our -- in our system.

12 And so, and then also we're going to be
13 validating information in the regular course of
14 business. As issues arise and we decide that a
15 site needs to be pushed up in the process, we
16 will be doing those, we'll jump around a little
17 bit to make sure that we can meet the needs that
18 we have of our branch.

19 So, as Doug mentioned, we do have the goal
20 of fixing our inconsistencies for the new system
21 that we will be moving into, but the ultimate
22 goal of this validation process is to ensure that
23 IDEM is communicating with and reimbursing

1 appropriate parties.

2 And the method that we have used to do
3 this is we're performing a multitiered review of
4 historic records and data. So, we break these up
5 into multiple tiers to see what needs what level
6 of review, and like I said before, we started
7 with the sites with ELTF claims in-house.

8 The very first step to looking at these
9 ELTF claims in-house is looking at that eligible
10 party. On the ELTF application there's a spot
11 for the eligible party, and the eligible party
12 that's listed there should match the party that
13 has assigning rights to the ELTF reimbursement.

14 And also the party that is appointing a
15 power of attorney. You realize that some sites
16 do not use an AOR or a POA, so in some cases
17 that's not applicable, but this is our first step
18 here. We're also making sure that that eligible
19 party on the application matches the recipient of
20 the consultant's invoice.

21 So, we're categorizing these. These are
22 our three tiers that we're talking about. We
23 have our three main categories. The Tier 1 is

1 those that have been validated. So, once they're
2 validated, they get processed and reimbursed.

3 The Tier 2 is when we have some of those
4 inconsistencies and we need a little bit more
5 information. These are simple fixes. We're
6 trying to fix these through e-mail communications
7 to get the supplemental documentation to fix
8 these issues.

9 And then we have our Tier 3, which these
10 are the ELTF denials and potential suspensions.
11 So, we're not outright denying these claims as we
12 find these inconsistencies. We have found we've
13 had information submitted consistently
14 inconsistent throughout the paperwork, from UST
15 documents all of the way through to ELTF
16 documents.

17 We found that with some of these we have
18 voluntary remediation going on, where the party
19 that's performing this remediation is not liable
20 or responsible. And so, in these cases when we
21 have the RP as viable, we want to make sure that
22 we know who's performing this corrective action
23 work.

1 And this is where these corrective action
2 documents come in. So, you go back to that ELTF
3 application, see who that eligible party is, and
4 it should match who is listed on the corrective
5 action documents. For example, if a CAPA is
6 submitted and it claims that work is being done
7 on behalf of ABC, Inc., the eligible party on the
8 ELTF application should be listed as ABC, Inc.
9 This tells us that the party that is performing
10 the corrective action is also the party seeking
11 reimbursement for the corrective action that was
12 performed.

13 So, now we go back to our UST compliance,
14 and you are locating notification forms for the
15 eligible parties. I've -- right here I've got
16 the definition of "eligible party," so these
17 owners, operators and property owners should have
18 a notification form on file. And you can go to
19 our virtual filing cabinet to look for these that
20 have been submitted to IDEM.

21 We then go back to when this release was
22 originally reported and look at the initial
23 incident report. These IIR's that are submitted

1 to IDEM do have a spot for the owner/operator at
2 the time of the release, so we recom -- see where
3 that owner/operator is identified, and that
4 owner/operator is the one claiming ELTF as
5 their FR mechanism. So, Doug will go a little
6 bit more into the FR mechanism later in the
7 presentation.

8 Then we're back to these notification
9 forms, so we want to notice -- identify where the
10 notification form is from the time of the
11 release, and that owner/operator at the time of
12 the release should have the notification form on
13 file with -- from that time period, and the
14 notification form, from the time of the release,
15 should match the owner/operator that's on the
16 initial incident report.

17 So, when this is -- when we have
18 consistent information, that's when these
19 validation letters are going to come out, and
20 this was the drive-up to our new revisions to
21 these ELTF applications, and we are asking for
22 these validation letters. We are wanting to,
23 again, ensure that we can continue communicating

1 and reimbursing the validated parties.

2 So, when we see that our administrative
3 record is consistent, we know that that site is
4 validated. If you receive payment on a claim
5 within the last few months, you can take that as
6 your validation letter, and we will work on
7 getting formal communication out so that owners
8 and operators can know that their sites are
9 validated.

10 In some cases we do find inconsistent
11 records, and this is where that Tier 2 and Tier 3
12 comes in. When we come into these Tier 2 and
13 Tier 3 claims -- or sites, then we have to do a
14 more thorough examination of the record, and
15 occasionally more information is needed to be
16 able to sort through these inconsistencies, in
17 which case the parties will be notified that we
18 need additional information.

19 We've had some validation process hurdles.
20 We have had some instances that slow down this
21 process, so some of those hurdles include
22 notification form inconsistencies. We've seen
23 conflicting and overlapping information; for

1 example, when an effective date of ownership on
2 one notification form conflicts with the
3 effective date of ownership on a later
4 notification form for the same owner. So, these
5 are some of the conflicting information that we
6 find that does slow down our process of getting
7 these sites validated as quickly as possible.

8 We've also seen business entity
9 inconsistencies, where the business name is used
10 interchangeably with an individual's name. A
11 business entity is its own legal entity, and when
12 we see those used as an individual signing on
13 behalf of the business instead, then it creates
14 that slowdown, and we have been using the
15 Secretary of State Portal to look at these
16 business names, look at viable entities, and try
17 to reach out to the owners and operators to solve
18 these inconsistencies.

19 Another thing that's been slowing us down
20 is unsolicited information. As we're going
21 through, we have been trying to reach out. We
22 want to get these validated. We'd like to get
23 these in front of the state. As information

1 comes in that we haven't requested, it gives us
2 one more thing to process that we haven't
3 requested, and it slows us down.

4 So, the best option there, wait until we
5 request this information. That will help us know
6 what and where inconsistencies are, help us
7 communicate it to you, and then get that
8 information back in front of the state in a
9 timely manner.

10 So, here's some of the data from our
11 validation process. Thus far we have reviewed
12 256 releases, and these are ones that we have
13 reviewed and processed, and here are some of the
14 numbers for how these have been broken down into
15 the three tiers.

16 A hundred and thirty-eight have been
17 validated, 48 have been in that middle tier where
18 they need a little bit more information, where
19 these -- we kind of see them as the simple fixes,
20 we can reach out by e-mail and try to get these
21 rectified.

22 And then 70 of them have been in that
23 denial/potential suspension tier, where we need

1 to come up with a few more fixes here, we are
2 trying to sort out these inconsistencies. And 66
3 percent of those are from one firm, and 79
4 percent from this firm are in the
5 denial/suspension tier.

6 So, with that, I will turn it back over to
7 Doug to talk about FR.

8 MR. LOUKS: I just want to make one
9 point also about the information and validation.
10 The further back you go and the older these
11 releases are, the much more difficult it becomes
12 to try and validate these things.

13 Our notification forms have changed over
14 time, as you know, and if you've ever seen one
15 from the 1990's, there's not a whole lot of
16 information in them, and it's -- there wasn't a
17 lot of verification at that point in time either.
18 You know, the Secretary of State didn't have an
19 on-line portal where I could go -- where we could
20 go and check and see if a business is active or
21 anything else like that, and it does make it very
22 difficult.

23 CHAIRMAN EHRMAN: Doug, the

1 notification forms and the validation letters,
2 are they going to be placed in the Virtual File
3 Cabinet?

4 MR. LOUKS: Yes, yes, they will. And
5 actually that's a very good point about the
6 validation letters. We started sending out a few
7 of them and we kind of pulled back. We will be
8 sending you a letter at some point when we
9 validate them, but we pulled back a little bit on
10 that so that we could have more -- we figured it
11 would -- well, I thought it was more important
12 for us to validate more claims than it was for us
13 to tell people they were validated, because at
14 the end of the day, as long as the claims are
15 getting reimbursed, I don't think they need to
16 have a piece of paper that it was validated as
17 much. That's just for us to put in the record
18 and say, "We've cleared it, it's good, and this
19 is all -- these are all of the reasons why. So,
20 we will go back and get to that as soon as we can
21 get these churned out of the system.

22 Why are we validating and why are we doing
23 this? Why are we all here today? We're here

1 because of the financial responsibility. ELTF is
2 a financial responsibility mechanism. FAB's job
3 is you're here to oversee how IDEM is
4 administrating this FR mechanism. It's one of
5 many that owners and operators can use.

6 It's a compliance requirement. It's
7 required at the federal level, and therefore,
8 required at the state level. It ensures the
9 funding source for liabilities related to a
10 release, both corrective action liabilities and
11 also third-party liabilities.

12 Now, this is really important. It is just
13 one -- and it works together and is a twin pillar
14 with compliance. These two things working
15 together are the foundational preventative
16 elements of all UST programs in the United
17 States, and this one included. That actually --
18 I mean that comes directly from the EPA and their
19 guidance documents, and I'll show you where those
20 are.

21 They were conjunctively to both prevent
22 harm, and in the instance that there is harm, to
23 eliminate it or alleviate it to the greatest

1 extent possible, and that's harm to human health,
2 that's harm to the environment, and that's harm,
3 other harm, to any person or property.

4 Here's a couple of things to look into.
5 Notice the dates on these, 1995 and 2000, not
6 reinventing the wheel here. Dollars and Sense is
7 kind of a very short condensed version of
8 financial responsibility. It gives you a
9 30,000-foot view of what everybody's doing. I
10 believe it's about 25 pages, not real extensive.

11 I strongly encourage the one on the
12 bottom. It's "Financial Responsibility...a
13 Reference Manual." It's about 350 pages of
14 rip-roaring good reading.

15 (Laughter.)

16 MR. LOUKS: I'm not lying to you; I
17 think the only person that truly enjoys reading
18 it is Amy. I read it begrudgingly, I admit, but
19 it is -- it is very important, and it's very
20 important for owners and operators to understand
21 what financial responsibility is and why we have
22 it and what its purpose is. Again, it's a
23 federal requirement under RCRA. The citation

1 there is 42 USC 6991. Don't ask me why they put
2 "b" and then also did subsections, but they did.

3 It establishes a million-dollar minimum
4 per occurrence requirement. This is a floor, not
5 a ceiling. What that means is everyone is
6 required to have one million dollars for every
7 occurrence to cover both corrective action and
8 third-party liability. You can always have more.
9 Obviously the ELTF provides more. Other states
10 also provide more. If you have 101-plus tanks,
11 you are required to carry two million. Again,
12 this is a federal requirement, but can find it in
13 our rule at 329 9-8-4(b).

14 Why are there financial responsibility
15 requirements? When RCRA was amended to take on
16 UST's, it didn't take a rocket scientist to
17 figure out that they leak. I think everybody --
18 pretty much everybody in this room understands
19 that. They just do. No matter how much -- how
20 good you are at maintaining them and being
21 compliant, they will eventually. It's not an if,
22 it is a when.

23 In the wake of that, it also was saddling

1 owners with several hundreds of thousands of
2 dollars, and potential of millions of dollars,
3 that they were having to pay out of pocket for
4 corrective action, and if they didn't have that
5 for corrective action, then ultimately they
6 didn't have it to compensate third parties for
7 any damages that were caused to them. So, the
8 federal legislators decided it was a good idea to
9 implement this and require it.

10 Who needs to demonstrate it? Either an
11 owner or an operator. It doesn't matter which,
12 but one of you has to have it. So, at any given
13 site, as long as an owner or an operator is
14 demonstrating FR, you're good to go from a
15 compliance perspective.

16 Here are some of the financial
17 responsibility mechanisms. We have all of these
18 in Indiana. These are also the same ones listed
19 by the Feds and are available in other states as
20 well. Commercial insurance, of course; surety
21 bonds; letters of credit; self-insurance -- if
22 you are particularly wealthy or you only own one
23 station, you can do that; trust funds,

1 guarantees; and, of course, the state fund, which
2 ELTF is one.

3 So, again, going back to the purpose. It
4 does two things. It protects the owner and the
5 operator. It allows for third-party indemnity
6 for damages. It also indemnifies owners and
7 operators to answer the agency's corrective
8 action demands.

9 The other -- the flip side of that is it
10 provides a remedy for third parties. It ensures
11 that an owner or an operator will have the funds
12 available to compensate victims that are injured
13 or damaged, whether that be the person or the
14 property. In other words, it's an equitable
15 transfer to the party that's harmed by a UST
16 release. If -- you know, we often see these
17 going off-site. These people should be
18 compensated for the harm done to them and their
19 property.

20 Oh, back to the last part again,
21 inevitably it's going to happen, and being able
22 to provide the funds for owners and operators
23 ensures not only that the third parties get it,

1 but that the owners aren't having to pay for that
2 out of pocket as well.

3 FR applies to the duration of operator or
4 ownership, so if I own a gas station from 2000
5 to 2005, my financial responsibility to that
6 station lasts from 2000 to 2005. It ensures that
7 there are funds to complete any corrective action
8 obligations on that owner for -- arising out of a
9 release during that time of ownership.

10 Again, I have a release in 2003. That's
11 my responsibility until I get an NFA. It never
12 goes away. I can never transfer that liability.
13 The only way it goes away is if I die, and even
14 then it probably would transfer to my estate.
15 That's a responsibility of the owner.

16 The owner and operator cannot be
17 released -- sorry for the grammatical error
18 there -- cannot be released from their FR
19 requirement until their obligation is fulfilled.
20 So, even if it's 2015 and I've got a 2000
21 release, I'm still obligated to maintain and keep
22 that FR until I can get that finished, and my FR
23 provider isn't off the hook until I am.

1 Therefore, based on this and several other
2 statutes, the FR mechanism belongs to an owner
3 and an operator. It's theirs through their time
4 of ownership. If you go back to the mechanisms,
5 insurance, self-insurance, trust fund, bonds,
6 when you transfer your property, does your
7 insurance policy transfer with it? Not usually,
8 not unless it's part of that arrangement between
9 the insurance company and the parties. Same with
10 the trust funds. I can't really access somebody
11 else's trust fund unless I'm also a beneficiary.

12 Definitions of owner and operator, you can
13 find them in the Indiana Code there. The
14 important thing to know are the exclusions.
15 There is bona fide purchaser status for owners
16 and operators.

17 If you do your due diligence when you come
18 onto a site that has an active release, you will
19 not be considered an owner for that release as
20 long as you continue to keep the -- to do the
21 stuff you need to to maintain that, which
22 includes allowing people access to your --
23 reasonable access to your property in order for

1 them to fulfill their obligation and complete the
2 corrective action.

3 If you're not an owner or an operator,
4 again, you're not liable for corrective action.

5 ELTF is a state fund. I'm going to tell a
6 little bit about that now. The EPA does not
7 require any state to establish or maintain a
8 state fund. Right now there are roughly 30
9 states that have state funds that are approved
10 for FR. Most state funds, the ELTF included, are
11 designed assuming responsible-party-led
12 corrective action, meaning the party that owned
13 it at the time of the release.

14 The other option that they see are state
15 led. No other option arises. Responsible-party-
16 led corrective action or state-led corrective
17 action are the two types of funds contemplated by
18 the EPA.

19 State funds may not provide FR for UST
20 owners and operators. And what this means is if
21 there's a state fund, you can have that, but you
22 still have to maintain one of the other
23 mechanisms to cover your million dollars, because

1 the EPA and that state are not going to say

2 you're compliant without it.

3 New Jersey is an example. There are
4 various reasons why they're not. New Jersey, I
5 believe, does not provide what's considered to be
6 full coverage. I think they only cover certain
7 things and not others, and for that reason, the
8 EPA does not consider them to be -- to satisfy
9 the FR requirement.

10 To meet the federal requirements, you must
11 be approved by the EPA. Again, there are about
12 30 states that have their fund approved for FR.
13 The ELTF was approved by the EPA in 1995. I keep
14 a copy of the letter in my desk. Amy keeps it on
15 her desk, apparently.

16 (Laughter.)

17 MR. LOUKS: If anybody wants a copy
18 of that, I believe it's in the VFC, but I can
19 give it to you as well.

20 Maintaining approval is vital. You need
21 to show that you're capable of providing full
22 coverage, and tied to that is fund soundness.
23 EPA tracks and reviews fund soundness annually.

1 It's a very boring report with lots of data that
2 Jay -- I make Jay do every year. He does it. I
3 secretly think he enjoys it. But they check that
4 every single year.

5 Fund approval is also highly scrutinized
6 during state program approval review, and for
7 anyone curious, we are in the middle of that
8 right now. We have submitted our draft to the
9 EPA. We have not submitted our final SPA
10 approval packet yet, so we are in the middle of a
11 fairly scrutinized review of the fund.

12 So, what does the EPA look at? They're
13 looking at the certainty of the availability of
14 funds. They want to know that when you say you
15 can pay at least a million dollars to every
16 single person if they have a release, that you
17 can.

18 Part of what goes into that is how much --
19 how many of the funds are going to be made
20 available to pay for these outstanding
21 liabilities or liabilities that you see are going
22 to be incurred. In other words, the flow; how
23 much revenue is coming in, how much cash flow do

1 you anticipate going out?

2 As early as 1999, several states started
3 to transition from their state funds to private
4 insurance. The major impetus of this was a lack
5 of solvency. Several states had folded because
6 they just couldn't keep up. Claims exceeded
7 their fund balance or their income, leading their
8 legislators to sunset their funds. I think some
9 of us know a couple of examples. Arizona and
10 Michigan both were sunsetted, but they're being
11 resurrected.

12 So, why not commercial insurance? Well,
13 some of you that have dealt with insurance, there
14 are eligibility issues, there are coverage gaps,
15 tons of exclusions, and for gas stations with an
16 inevitable occurrence that's going to happen,
17 premiums are not cheap.

18 So, by having a viable, sturdy fund, we're
19 enabled to assure that financial responsibility
20 mechanism for owners and operators in this state
21 for pennies on the dollar comparatively. It's
22 good for the state, it's good for the owners and
23 operators, it's good for businesses, and it just

1 makes sense.

2 Again, a couple of states that had their
3 funds dissolved that are resurrecting them are
4 Arizona and Michigan. Arizona provides a very
5 good example, because theirs was sunsetted not
6 necessarily because they were having problems
7 with cash flow. That was part of it, but it was
8 still fairly stable. They just decided to get
9 out of the game at some point. They did so for
10 about five or eight years, and it was terrible.
11 Now they've got none at all.

12 So, they came in -- they brought in a new
13 director, who -- I forget what his background
14 was, but it was a business background. I don't
15 remember if it was insurance or not. They
16 brought in him and a technical specialist, who
17 redesigned everything for them and ran everything
18 through the legislature.

19 They were able to get a pilot project,
20 where the legislature set about, I think, 25
21 million for them to start doing this, and they're
22 now going to try and push for the legislature to
23 fully enact their fund again, and again, it's

1 because they were going out there and none of
2 these sites were getting cleaned up at all.

3 And in Arizona, with a high amount of
4 Native American territory, it was even worse, and
5 it was a huge problem for them, and I can't
6 caution enough.

7 I went to a national conference a year
8 ago, and I heard Arizona talk, and I'm
9 actually -- I talk with the guy from Michigan
10 frequently and I talk to the guy from New Jersey,
11 and trust me, it's not good when you have to deal
12 with insurance. New Jersey's just now getting
13 around to things that, you know, have been
14 sitting around for 15 years with, you know,
15 fences lying around.

16 Some of you have seen these slides. This
17 is an Audit Recap. So, we went through the
18 financial audit. It came out in 2015. It showed
19 that 2010 our average cost per incident was about
20 a hundred and ninety-one thousand, close to a
21 hundred and ninety-two.

22 2015, that number went up to three hundred
23 and forty-one thousand dollars, which was a 178

1 percent increase. The national average in 2015
2 is a hundred and fifty-seven thousand. Again,
3 this is all available in the financial audit,
4 which put Indiana at 217 percent of the national
5 average.

6 At that point in time, again, based on
7 2015 numbers, Indiana was the third highest cost
8 of any state fund in the country. Our neighbor
9 and competition at that time, Illinois, was 194
10 percent less; Kentucky, 282 percent less; and
11 Ohio, 316 percent less.

12 Our price parity index, which is how much
13 things cost relative to the state was 91.4
14 percent of the national average, so about an
15 eight-and-a-half-percent discount on the price of
16 goods and services in Indiana, yet increased
17 costs for corrective action.

18 The -- updating this a little bit, again,
19 I think some of you have seen this last time, the
20 2016 national average actually went down.
21 Indiana's went up ten percent. We are now -- at
22 that point, it was 242 percent of the national
23 average, which ranks us number one, above

1 California and New York and Pennsylvania. During
2 the same period of time, Illinois, Kentucky and
3 Ohio's costs all went down as well, fairly
4 dramatically.

5 This is a further update. These are the
6 numbers we've supplied to the group that compiles
7 these. Our costs to close in 2017 was \$525,000,
8 an increase of 39.7 percent, which would put us,
9 based on the 2016 average, at 338 percent more
10 than the national average.

11 Now, I know we don't have the 2017
12 numbers, they should come out probably in January
13 or February of this year, but the average -- the
14 national average over the last six years has
15 remained fairly stable, between about a hundred
16 and thirty-five and a hundred and sixty thousand
17 dollars, for an overall average of a hundred and
18 forty-five, so I don't anticipate a terrible
19 amount of change in the national average.

20 2018 numbers, good news, our cost went
21 down a little bit. The bad news, it's still
22 close to 20 percent more than the -- than what we
23 were at in 2016. So, based on the 2016 national

1 average, that would put us at 2.85 times more,
2 based on 2018 closures.

3 Here's a comparison of -- I averaged
4 our 2017 and 2018 numbers and then compared them
5 to what other states were showing, and I picked
6 these states for a particular reason. Some of
7 you will know why. Utah, you see there we're 325
8 percent; Colorado, we're double, and we're about
9 350 percent of Washington.

10 All of these states are out west, and
11 what's the difference between states that are
12 east of the Mississippi and west? Riparian
13 rights. Alters it, makes it more expensive.
14 They also have water shortages, and they value
15 their water resources a lot, especially in places
16 like Utah. Colorado, if you want to make a lot
17 of money as a lawyer, learn water law.

18 Tennessee, they're, you know, our close
19 neighbor to the south, \$104,000 to close their
20 incidents, so 469 percent lower than we are.
21 Florida, pick Florida. They're full of water.
22 They're underwater. It's a swamp. Yet they were
23 able to get things done for 200 percent cheaper

1 than we can here.

2 New Hampshire, again, valuable water

3 resource, \$159,000 average cost per incident,

4 which is three times more. Why New Hampshire?

5 Good question. I'll answer it myself.

6 New Hampshire does not do risk-based closures, at

7 all. And they're able to get these things done.

8 Massachusetts, 161,000 cost to closure,

9 which is three times ours. Connecticut,

10 New York, California and Pennsylvania. I'll

11 leave Pennsylvania out of this one. So,

12 Massachusetts, Connecticut, New York and

13 California, very liberal states, very much take

14 environmentalism very, very seriously, and they

15 have higher objectives. Again, three times,

16 twice, and 1.3 times the cost to get to closure.

17 Pennsylvania, terrain's pretty crazy

18 there, so they were our closest competitor, but

19 based on their numbers, we are still 1.3 times

20 more expensive than they are in the State of

21 Pennsylvania.

22 Here's our closed incidents. That's what

23 all of these numbers are based on. So, our cost

1 of closure is based on when we grant an NFA.
2 That's how much it costs to get that NFA. 32.3
3 percent of our sites were above 500,000; 12.1
4 percent are between half and one million, 20
5 percent are above one, so one to two. And just
6 for reference, we've put the ASTSWMO National
7 Average in there at 155. Brownfields, average
8 budget is about 200,000, we've put that in there.
9 And our Fiscal '18 is right there at 441,965.

10 Here's our active incidents. 45.2 percent
11 of active incidents in the State of Indiana are
12 already above a half a million dollars
13 reimbursed. That's not -- and we have not talked
14 about milestones yet, but that's how much we've
15 reimbursed already. 21.6 percent of our sites,
16 nearly a quarter, over a fifth of the sites in
17 Indiana are between one and two million, again,
18 already reimbursed. These are sites that have
19 not been closed yet.

20 So, what do I -- what can you glean from
21 this? Those average numbers are going up, and
22 they will continue to go up. So, Greg, again, to
23 come back to your question, what are we doing

1 wrong?

2 Here's an overview of some our task costs.

3 I'll provide some slides for this as well. Field

4 work is elevated, but well within the normal

5 range of what our competitors are doing. I'm not

6 about bottom dollar. I don't think that's good

7 for anybody involved. I don't want to be downed

8 by Kentucky, as we are, frankly, but I definitely

9 want to beat Illinois, and that's just because

10 I'm competitive, I guess.

11 Equipment and materials are also average.

12 Where you're seeing the discrepancy is in what

13 you consider to be office labor. This is QM,

14 quarterly monitoring, prep time, report writing

15 costs, claims prep, and CAP development costs or

16 CAPA development costs.

17 Prep time. This is the time that is used

18 to prepare and plan for quarterly monitoring.

19 The range is all over the place here. I see

20 anywhere from 10 hours of prep, I've seen 70.

21 That's just what I remember. I see a lot of

22 numbers, I don't remember them all, but I have

23 seen one with 70 hours, and that's just based on

1 submissions that we've had over the past quarter
2 or two. The costs were incurred maybe not this
3 last quarter, but that's when the costs were
4 submitted.

5 The average hours is a little bit
6 difficult to discern on this one because you have
7 seven different rates. You know, different
8 people are doing different planning activities.
9 It's kind of hard to mash all of those together
10 and have them be equal.

11 Average costs over this is -- over the
12 last quarter -- was 924 for planning. Maximum
13 costs, over -- almost \$3400, and on that one it
14 was 50-plus hours -- this is just an example,
15 50-plus hours to prepare for someone's 56th
16 quarterly monitoring event. That was just the PM
17 time.

18 Report writing. It's associated with all
19 phases of what corrective action is going on,
20 from investigation all of the way through NFA.
21 Quarter monitoring reports, the max that we saw
22 was almost \$11,000. The average is about 2500.
23 That was a subsequent monitoring report.

1 Again, I'll go back to that one. I'm
2 going to have to provide a case study for this.
3 Ninety-seven hundred dollars for the 56th
4 quarterly monitoring report submitted to the
5 agency from that same site, put in an owner and
6 operator conversation.

7 I had a conversation with an owner and
8 operator -- it was actually an owner, but he
9 said, "Hey, what's with all of these reports that
10 I get, you know, 175 pages every quarter?" And
11 he said, "You know, I actually look through
12 those," and I said, "Well, good for you," and he
13 said, "You know, there's only like four of five
14 pages different in each one of these," and I
15 said, "Yeah," I said, "you don't want to know
16 what I pay for those four or five pages."

17 It's very common for that report to cost
18 more than the fieldwork and the lab analysis.
19 It's costing us more to have that report written
20 than it is to get the data.

21 Claims prep. We started paying for it
22 about a year ago, a little over a year ago. The
23 average cost for claims prep has been about

1 eighteen hundred, between eighteen and nineteen
2 hundred so far.

3 Our maximum, that is a very egregious
4 number, \$20,000 within one year for preparing
5 claims. One particular example that sticks in my
6 mind is about \$5600 just to prepare two claims.
7 It was 89-plus hours, which means that it was
8 over a full workweek to prepare each claim, and
9 these were not that abnormal.

10 We have 12 incidents just within one year
11 that are already above 5,000. Why is that
12 relevant? California cost guidelines limit it to
13 5,000 total per incident, and we have 12 that met
14 that within a year.

15 One particular site example, it was a site
16 that was in another program that was submitting
17 claims, prep costs, this entire time. The owner
18 was paying it or, you know, insurance was paying
19 for it, what have you. The day that the law
20 passed allowing ELTF to pay for claims prep, same
21 consultant, same site, same claim, the cost
22 doubled.

23 CAPA development, again, wide range. I

1 see anything from a thousand to sixty thousand.

2 The average is about seventeen and a half. This

3 was based on the ten months recent CAPA's that

4 were submitted over the last, I think, nine

5 months. No, it was two quarters, sorry, the last

6 two quarters.

7 Just an example of one that I pulled,

8 400-plus PM hours, 87 senior PM hours and 25

9 principal hours. That totaled \$60,000. Now, I

10 happen to have these costs from a previous

11 consultant that did both a CAPA and a pilot study

12 for a third of the cost.

13 Here's comparison of costs. This is what

14 several states will pay for that. California,

15 they're a little bit of an anomaly, but again,

16 we're -- our average is more than that. But they

17 will pay eleven and a half thousand dollars for a

18 CAPA. That's worst-case scenario. That's a site

19 that they believe is what you would consider to

20 be very bad, rampant groundwater and soil

21 contamination requiring a very intensive CAP.

22 They will pay eleven five, and again, our average

23 is seventeen and a half.

1 Minnesota, Kentucky and North Carolina,
2 they just have the easiest numbers to deal with
3 without having to piece everything together, but
4 again, you see a pretty standard range of right
5 around six thousand dollars.

6 Comparison of costs of quarterly
7 monitoring events. Again, right around that
8 thousand-dollar mark. California, their maximum
9 allowed is 3,000 for a quarterly monitoring
10 event -- or for a quarterly monitoring report.
11 Our average is almost what their maximum is.

12 Claims prep. California does 5,000 per
13 incident. Wisconsin will pay you 600 per claim.
14 They're sunseting their fund, so I wouldn't put
15 too much stock in that. Louisiana and Virginia,
16 I think, have a good set of numbers. They're
17 easy to deal with.

18 I think Louisiana, if you were doing
19 fieldwork, they up the costs because you're going
20 to have more line items; understandable. If
21 you're just doing a report it should be easier,
22 but 300-plus and 125 bucks per report. Virginia,
23 they do it by phase. You get one claim per

1 phase, and then they basically add a hundred
2 dollars for, I think, every ten line items that
3 go above ten per phase.

4 Here's just a good case study, one that
5 kind of came up, and our -- Jill actually helped
6 me develop this. She did a lot of this, and she
7 started digging. The site has two releases.
8 That was in 1993 and in 2006. They are doing
9 work under the 1993 release.

10 The UST's were removed in -- around 2006,
11 and an overexcavation of soil was conducted, so
12 they performed -- 3,000-plus tons were removed.
13 They're still apparently recovering free product.
14 It's really not possible at all, but even what
15 they're recovering is pretty minimal; 5.8 gallons
16 is what they've recovered of free product over
17 the last five quarters, and it's about .97
18 gallons is what they got in the last quarter.
19 Consultants suggested active remediation on this
20 site, which they'll review again.

21 The routine costs for this site. Planning
22 for quarterly monitoring costs, \$7400, 64 hours
23 of PM time. That's a week and a half of

1 someone's full-time job preparing to quarterly
2 monitor. Again, they had done this over 50
3 times, and they spent 64 hours planning to do it
4 again.

5 Field costs for this, again, pretty
6 reasonable, \$2700. Not bad at all. Report
7 writing costs, \$9700. Monthly NAPL recovery,
8 that's your free product, \$7500. I remind you we
9 got one gallon of gas last time, so \$7500 for one
10 gallon of gas. Tom and Greg, I think you guys
11 might be undercharging.

12 (Laughter.)

13 MR. LOUKS: Claims prep, 9,000 plus.
14 One claim. Last quarter they submitted costs
15 totalling over \$32,000. Again, the NAPL
16 recovery, \$7700 a gallon, and on an annual basis,
17 \$6400 a gallon. I still don't think they've
18 quite got down to what, 2.89 yet.

19 Total annual expenses just for the routine
20 costs for this site, we are being billed \$219,000
21 a year. To date, we've reimbursed 1.56 million
22 on this site. They've requested over 1.8. I
23 still have some claims in-house that I am going

1 over.

2 Again, I wanted to put this slide back in
3 here. That's why we're here. That's exactly why
4 these numbers are where they are.

5 What are next steps here? It all ties
6 back to FR. It all goes back to the owners. I
7 need to improve my relationship with owners and
8 operators. I've been doing it for about 15
9 months. It's very draining, it takes a lot of
10 time, it's hard to get out there, but I do my
11 best.

12 I need to -- I'm really trying to restore
13 control of these sites back to the party
14 responsible. If we have sites that get to their
15 two million or two and a half million threshold,
16 depending on when that release occurred, and that
17 responsible party is not involved anymore, I
18 don't get very good responses from them. They do
19 not like me. They ask me why I let someone else
20 do this. And my response is I'm stopping.

21 Better education, both from a legal and
22 technical perspective. We write things and say
23 things that don't make sense to other people. I

1 say things all of the time that make perfect
2 sense to me, and I realize that other people
3 don't get it, and I'm constantly told that, so I
4 need to work on that.

5 But we need to get it out there and allow
6 owners and operators to pick up documents from
7 this agency, understand how their site works,
8 understand how FR works, understand how this fund
9 works, and what their obligations are.

10 Better communication. We've got to be
11 more accessible to the owner and operator.
12 Again, some of that is cutting out the technical
13 jargon, some of it is, you know, making sure that
14 when we send out correspondence, we're sending it
15 to an owner. We're making sure that it gets put
16 into their hands, too, and allowing them the
17 information they need to be able to take control
18 of their own site and understand what's going on.

19 One of the things we've been doing for the
20 last nine months, we've redone all of our LUST
21 documents, for instance, and bullet pointed
22 everything so that any owner can pick it up and
23 on the first page they know, "This is what

1 happened and this is what I've got to do."

2 The second thing, cost guidelines. I
3 think that's pretty apparent from my slide. We
4 need those to curtail what I can only say is
5 systematic waste and abuse of that fund.

6 Further, I'm going to provide a validation
7 report, all of the things that Colleen was
8 talking about. I'm going to go through every
9 single claim that we validated and all of the
10 information we have and I'm going to compile it
11 into one report and show exactly why we did pay
12 and exactly why we did not pay for these sites
13 that were -- or for these incidents, rather, and
14 why we answered things the way that we did. I
15 hope to be able to provide that by the end of
16 this year; if not, soon after that.

17 And that's all I have. Any questions?

18 MR. COBB: Oh, yeah.

19 (Laughter.)

20 MR. COBB: On the validation of the
21 256 incidents reviewed and that were -- a large
22 percentage was denied, 27, what would that mean
23 in the past incidences? I mean those are, I'm

1 assuming, current.

2 MR. LOUKS: Yes.

3 MR. COBB: So, we haven't gone

4 back --

5 MR. LOUKS: No.

6 MR. COBB: -- five years or ten

7 years --

8 MR. LOUKS: No.

9 MR. COBB: -- to look at how many

10 were paid that probably should not have been

11 paid?

12 MR. LOUKS: Correct, we're not doing

13 that.

14 MR. COBB: Are we going to do that?

15 MR. LOUKS: No.

16 MR. COBB: Why not?

17 MR. LOUKS: That was a policy

18 decision that was made by both the Commissioner

19 and Amy and Peggy when they -- we all sat down

20 and talked about that, that that was just not

21 something we were entertaining. It's already

22 been done. The past is the past. We need to

23 fix --

1 MR. COBB: But could you not go back
2 and go after those people and request the money
3 back from them?

4 MR. LOUKS: Yes, we probably could,
5 most likely.

6 MR. COBB: And maybe on the people
7 that you had that were abusing the system, which
8 seems to be a primary person or company, how much
9 money did they take from the Excess Liability
10 Fund not legit?

11 MR. LOUKS: So, I would like to
12 emphasize that it is not one particular company;
13 it is -- it is rampant.

14 MR. COBB: Well, I mean, again, if --
15 you know, I wrecked my car the other day, and I'm
16 going to tell you a little story; okay? And the
17 dealer gave the insurance company the wrong
18 freakin' VIN number. Guess what the insurance
19 company did to me.

20 MR. LOUKS: They denied your claim.

21 MR. COBB: You got it. And the VIN
22 number matched my exact vehicle.

23 MR. LOUKS: Yeah.

1 MR. COBB: And I had to go through a
2 lot of hoops to prove that the dealer made a
3 problem -- or an error three years ago to get the
4 car paid for. And I think we have to have the
5 same due diligence, and it just floors me that
6 we've spent out a lot of money.

7 MR. LOUKS: Correct. And to answer
8 the second part of your question about the fraud,
9 waste and abuse and recovery of that, we would be
10 barred at some point by a statute of limitations
11 in recovery for waste and abuse purposes at some
12 point. I'm not sure exactly when that is.
13 That's more of a question for Nancy. So, our
14 ability to recapture it would be limited by some
15 time frame.

16 MR. COBB: But it would make a point.

17 MR. LOUKS: Yes, it would.

18 MR. COBB: A clear point. And I'm
19 sure you -- oh, the second question. Time sheets
20 for their hours. I'm assuming you're getting the
21 logs of when they use these -- this sixty hours.
22 I mean do they have the date and the time when
23 they did all of this stuff?

1 MR. LOUKS: Correct, and that
2 actually was another step I was going to add
3 there, but I kind of was cramped for time. I had
4 to put this together for the last two days. We
5 are going to start auditing not just the claim
6 itself, but we're going to be doing physical
7 audits on-site. We will have our field guys be
8 field guys and gals, and they will be out on-site
9 and monitoring the work that's being done.

10 The first thing we're going to do is we --
11 and we actually already started it. Our UST
12 Section Chief did the very first one. We will be
13 doing an audit of every active system that's ELTF
14 eligible in the State of Indiana, to ensure that:
15 A, it's there; B, it's running; and there aren't
16 anything else going on with that.

17 The other part of that is we will start --
18 we are going to start doing paired sampling. We
19 will have our chemist on-site when samples are
20 being taken, and we will be doing that as well.
21 These are things that other states that have
22 robust fraud, waste and abuse programs are doing.
23 We are not, but that is -- these things we are

1 going to do, and we will start having people
2 on-site verifying these.

3 MR. COBB: Are you going to be
4 cross-referencing the log sheets with other
5 projects? So, if Kim's turning in a project for
6 me -- Kim's not in the business anymore, so I can
7 do this -- for site ABC, and daggone it, he was
8 doing that prep work at the same time he was
9 doing X, Y and Z. Well, wait a minute. How can
10 you charge me twice?

11 MR. LOUKS: Right. And we are doing
12 that, we get that information. Our ability to
13 fully analyze that is somewhat limited. It comes
14 in on paper. Other states, like Tennessee,
15 have -- Tennessee has a very, very robust program
16 that they use to analyze all of that data as it
17 comes in. That's part of what that database is
18 going to be doing for us.

19 MR. COBB: Okay.

20 MR. LOUKS: We get data, but we can't
21 do anything with it because it's in a PDF on the
22 VFC.

23 MR. COBB: Okay. Well, I -- as a

1 Board member, and part of our job is to protect
2 this fund, and I think we are being taken
3 advantage of, and I take that very personally.
4 When I walk up to other marketers and they say,
5 "Oh, when you were on the Board they went
6 bankrupt. What did you do to keep from doing
7 that?" that's a reflection on me.

8 So, everybody on this Board needs to
9 understand that it is our responsibility, and I
10 see a lot of flagrant -- a lot of issues that
11 have got to be resolved immediately. It's our
12 responsibility --

13 MR. LOUKS: Correct.

14 MR. COBB: -- traditionally.

15 MR. LOUKS: I agree. And some of the
16 things that we have done over the last 15 months,
17 you know, the agency has played a part in this as
18 well. I'm not going to stand up here and say
19 that it didn't. We had -- we -- that's pretty
20 fairly common in business organizations for that
21 to happen.

22 It's exactly what we did. We had people
23 that weren't talking to other people. Our

1 project managers were -- for lack of a better
2 term, they were swiping a card that their parents
3 paid. They were saying to do things, and they
4 had no idea how much that costs.

5 And I'll tell you, when we started talking
6 and breaking down these lines of communication
7 between our project managers and our claims staff
8 and integrated that group, they were shocked, I
9 mean utterly shocked. A few of them are behind
10 me, and they can attest to that. I -- they had
11 no idea, no idea that that is what these things
12 cost.

13 But the other part of that was they
14 weren't -- you know, that's just how things were
15 managed. If somebody wanted to do it, you know,
16 from a corrective action standpoint, if it's not
17 going to harm the environment, go ahead. That's
18 fine. But they were not communicating on that
19 back end and tying everything back together to,
20 in my opinion, provide the fiduciary obligation
21 that we have as fund managers.

22 MR. COBB: Yeah. Well, Doug, thank
23 you for all of your work.

1 CHAIRMAN EHRMAN: Yeah, thank you,
2 Doug and Colleen, especially for that much
3 appreciated financial responsibility refresher.
4 I think everybody appreciated that, and your
5 point is well taken.

6 MR. LOUKS: Thank you.

7 MR. PRASAD: I have a few questions.
8 On the analysis, you've really done awesome. So,
9 was there any analysis done on finding the root
10 cause why it is going so high.

11 MR. LOUKS: Why the costs are going
12 so high?

13 MR. PRASAD: Yeah.

14 MR. LOUKS: Yeah, with the financial
15 audit that was performed that showed exactly why
16 the costs were going high. I mean we did discuss
17 it. There were a lot of issues listed in there
18 that allowed this certain -- these things to
19 happen and prevented the actual analysis on the
20 part of the agency in ensuring that it did not.

21 MR. PRASAD: Yeah, because one of
22 the -- based on comparisons I saw --

23 MR. LOUKS: Uh-huh.

1 MR. PRASAD: -- with the different
2 states, is the other states following the same
3 kind of process procedures? What are the
4 response times for the claim reviews or the
5 technical responses? And taking a look at the
6 claim, what is the -- our claim in Indiana, the
7 claim, is anywhere from a hundred pages to five
8 hundred pages, and what's -- is it similar for
9 the other states? Because that changes the cost
10 significant [sic].

11 MR. LOUKS: It does not change the
12 cost that much, and Tennessee, for instance,
13 their claims process is very intricate, so that
14 system I was telling you about regarding employee
15 time sheets, they require every single one of
16 those to be hand-entered into their very own
17 database. You cannot submit them from your own
18 program. It will not transfer. It takes a
19 significant amount of time, but they require it.

20 Other states, I -- I mean a claims program
21 is a claims program. Well, apparently not, but
22 no, they require -- they're going to require
23 backup documentation, they're going to require

1 time sheets, and, you know, we offer to the
2 claims preparation because we realize that the
3 phase application, we were asking for information
4 and we wanted to offset that. But the increase
5 costs aren't all phase applications. These are
6 the old applications that were being used before,
7 also with the elevated costs for preparation.

8 And as far as technically and report
9 timing there, California does not get back to you
10 immediately. California takes a very long time.
11 They will be the first to admit to you that they
12 are very inefficient at what they do in that
13 regard. They have a certain amount of staff, and
14 they take it very seriously about how they apply,
15 they're very intricate, and they're not real
16 pressed for time when it comes to that.

17 But I would also mention that the amount
18 of response that's required for this agency is
19 also something that isn't really necessary.
20 Orders are orders. When we issue an order, I
21 mean I understand that there are going to be
22 people that question that, and that is fine, but
23 it does not always require immediate response

1 from the agency unless you do not know what the
2 demands are.

3 MR. PRASAD: Okay. The reason I
4 brought up the technical response is in the
5 current claim, we are taking at least a hundred
6 and eighty to two hundred as an average for the
7 response, and at that time, the plumes are not
8 stopping. They are just doing whatever their job
9 is supposed to do. So, that is the reason the
10 cost is significant. So, is the other states --
11 so, that's why I'm bringing it in. Is the other
12 states -- what is their response time? Are they
13 responding within 30 days so you are not making
14 the plumes go beyond certain boundaries?

15 MR. LOUKS: Oh, I disagree with you
16 on some of those aspects, and that was picked up
17 in the audit. The technical milestones, holding
18 up money and keeping investigations longer does
19 increase the costs, that's absolutely true. By
20 being more rapid in this, in how we approach
21 corrective action, it will streamline the costs.
22 But the other part inside of that that we are
23 developing, again, this is -- this is a technical

1 discussion, but it does loosely feed into this.

2 We will be developing a tier system,
3 which, again, most other states have. We won't
4 be issuing corrective action plans very often
5 anymore. They will be going to -- a corrective
6 action plan, I mean we have sites that need them.
7 Most people in this room have seen one, but those
8 are very specific sites that have specific
9 problems that require very intense oversight and
10 management by this agency.

11 Most petroleum sites do not. Petroleum is
12 petroleum. It's fairly stable, it doesn't want
13 to move, it tends to stay where it is, and it is
14 scores of magnitude less harmful than the other
15 things that this agency deals with, and I'm just
16 saying we don't have -- even with other
17 loopholes, we don't have the same problem in
18 those sections, in those groups. We have other
19 problems with other groups.

20 CHAIRMAN EHRMAN: Thank you very
21 much.

22 MR. LOUKS: Thank you.

23 CHAIRMAN EHRMAN: Okay. Getting back

1 to the meeting, this is the Open Forum, and we've
2 got just one appearance card.

3 Mr. Chris Braun, please.

4 MR. BRAUN: Just so I won't put
5 everybody to sleep, I'll turn the lights back on.

6 CHAIRMAN EHRMAN: Thank you.

7 MR. BRAUN: Chris Braun, on behalf of
8 the Indiana Petroleum Marketers and Convenience
9 Store Association and on behalf of owners and
10 operators of gas stations throughout the State of
11 Indiana.

12 Doug and Colleen did an excellent job of
13 providing really in-the-weeds detail, micro
14 details of the program. What I'd like to do
15 besides is really step back and take a macro look
16 at the ELTF program. Where are we? Where are we
17 going?

18 If you go back to 1995, from the inception
19 of the ELTF program to date, it's paid out about
20 a billion dollars. There have been over 5,000
21 sites in the State of Indiana cleaned up, in all
22 92 counties. A lot of good work by a lot of good
23 consultants, and we were on track through -- as

1 you saw -- through about 2010. And so, we have a
2 lot to be proud of, a lot of accomplishments.

3 But what you've seen in the last four or
4 five years is unfortunately a gross abuse of the
5 ELTF program, and there is not a single good
6 reason why Indiana is a multiple of our sister
7 states surrounding -- around us or in California.
8 We have provided opportunities for consultants to
9 recoup costs, and we've provided reasonable cost
10 guidelines.

11 What we didn't do -- and we trusted, and
12 it's very disappointing, quite frankly, to have
13 the labor costs. You know, we didn't put a cap
14 on the number of hours you could spend. You
15 might give \$90 an hour for a particular
16 geologist, whatever it may be, but we didn't cap
17 the number of hours.

18 It now is very clear that we have to go in
19 now and do a one size fits all and put a cap on
20 the number of hours that can be spent, because
21 the fund is under tremendous duress. When you
22 start running the numbers backwards, and, you
23 know, the number you saw there today, we have

1 like 42, 43 million dollars in claims paid, but
2 we also had 12 million dollars of claims in limbo
3 as of the time June 30th rolled around, for the
4 reasons that Doug talked about.

5 So, you're talking about 54, 55, 56
6 million dollars in claims, and you saw the
7 decline in revenue; right? We're down to about
8 43 million dollars. We have to live within our
9 means. We have to live within our revenue
10 source. It doesn't do us any good to complain
11 about what the legislature decided last year with
12 the cost increase in gas tax. That's our new
13 reality. That's not going to change. But we're
14 going to have to dramatically reduce our costs
15 across the board, and my standpoint, I think
16 everything's on the table.

17 You know, when you look at it, we have a
18 two-and-a-half-million-dollar ceiling now. When
19 a consultant eats up two million or 2.5 million
20 dollars of the fund, there's nothing left for the
21 third-party claim to be paid. We are now, in
22 doing so, undermining one of the very
23 requirements that EPA requires, to have money

1 both for third-party claims and first-party
2 claims.

3 So, one option would be to say, "Well,
4 that 2.5 million, maybe only a million's
5 available for cleanup, the first-party cleanup,
6 and the rest is available for third-party
7 claims," and just -- we have to impose a hard
8 ceiling on the amount of money that can be spent
9 on first-party claims and save the balance for
10 third-party claims.

11 And maybe it's a million five. I don't
12 know where the number is. It's something that
13 I'd like to have the input of the consulting
14 community, the legislature, this Financial
15 Assurance Board, et cetera, but I think we need
16 to work together.

17 But time is of the essence now, because
18 when you start working out the numbers and the
19 time line now, if we go to the legislature next
20 January and they adopt something, it becomes
21 effective July 1 of next year. To effectuate
22 then, to come back to this Board and say, "Now we
23 need to do a rulemaking to implement what was

1 just done in the legislature," it's another 12 to
2 18 months. So, you're two, two and a half years
3 out.

4 At our burn rate right now, we're about
5 three years away from priority payment; okay? In
6 March of this year we thought it was five years.
7 We're now at -- again, at the burn rate we've got
8 right now, at the exorbitant costs that are being
9 charged, we're about three years from priority
10 payment. And for those of you who were around
11 in 2005, you remember it was not a fun time. The
12 only sites being cleaned up then were
13 high-priority sites. All of the other sites came
14 to a grinding halt.

15 And so, we have some choices to make. We
16 can either sit back and not do anything, let this
17 fraud and abuse continue on for another two --
18 two or three years, and we're going to hit the
19 wall, and claims would come to a screeching halt.
20 And it's not going to do anybody any good.

21 And keep in mind, of the billion dollars
22 paid out since 1995, owners and operators have
23 received zero dollars; okay? We've not

1 received -- we've paid into the fund, we've
2 collected the money, every gallon, we've paid
3 tank registration fees, et cetera. We've never
4 collected a dime.

5 And I -- again, I'm going to reach out to
6 the consulting community to take a lead with us
7 to come up with solutions. And whether it's five
8 hours' hard cap for corrective action plan
9 preparation, whatever it is, we've got to lower
10 our costs, and we need to do a hard cost -- we
11 may even need to look at things like such as, you
12 know, groundwater.

13 You know, it could be done. You saw a
14 sample size there with the orphan tank fund site;
15 right? Fifty sites. That program started
16 in 2014. They've already gotten 15 NFA's in
17 basically three and a half years. These are gas
18 station sites, not nuclear waste sites; okay?
19 This is stuff that should be cleaned up in three
20 or four years' time. We have so many sites that
21 are 10, 15, 20, 25 years old that are just
22 exorbitant costs.

23 We may need to look at quarterly sampling

1 reports. You know, the history of that site
2 doesn't change every quarter. You could just
3 say, "You're only going to have to submit
4 whatever your current sampling results are. We
5 don't need the other 150 pages that you've got on
6 your word processor that you keep spitting out
7 and you charge us, you know, thousands of dollars
8 for. Just give us your current report, because
9 the history of that site hasn't changed."

10 And so, we may need to look at also, you
11 know, this groundwater, because, again, with the
12 orphan tank fund sites that people are doing,
13 they're cleaning up these sites for \$199,000.
14 When left to their own devices, consultants are
15 charging over \$500,000 for these sites.

16 We may have to go to a default mechanism,
17 much like what they're doing here with the orphan
18 tank fund sites. You pull the tanks, soil
19 excavation, slap a DRC on it, four quarters of
20 sampling, and away you go. That may be the
21 default mechanism we have to go to. That'll be
22 the standard formula for a site that you have to
23 follow, and then if you have some exception to

1 it, then go make your case for an exception.

2 We may need to look at it and say, "You
3 know what? We don't really have a groundwater
4 problem in Indiana." You know, the groundwater
5 that's being treated right now, it's not -- it's
6 at the perched level. So, your aquifer that your
7 drinking water supply comes from is down a
8 hundred, a hundred and fifty feet. We're not
9 cleaning up groundwater at a hundred, a hundred
10 and fifty feet. We're cleaning it up at 12, 15,
11 20 feet. That's perched water.

12 So, maybe if we say, "You know what?
13 We're not drinking this stuff, and as long as
14 it's not filtering up and causing some vapor into
15 an apartment or a building or a gas station,
16 whatever it may be, if there's no vapor
17 intrusion, pathway to expose, maybe we just leave
18 it there"; right? We're talking about gasoline;
19 right? This stuff will break down over time.
20 Maybe we just don't do groundwater cleanup in
21 those situations absent some vapor intrusion.

22 But the reality is, you know, I can't in
23 good conscience go back to the Greg Cobbs of the

1 world, Tom, and others in the petroleum market
2 industry and say, "Oh, by the way, this financial
3 responsibility mechanism that's been available to
4 you for the last 20-plus years is now going
5 bankrupt."

6 And owners and operators have got to --
7 we're going to have to look at maybe they need to
8 have skin in the game. Maybe owners and
9 operators should pay ten percent of whatever the
10 cleanup cost is out of pocket, so they know right
11 away that they've got some exposure.

12 So, all of the sudden the consultant who
13 shows up and says, "Wow, this is going to cost,
14 you know, \$300,000 and be done in five years,"
15 and all of the sudden it's a million five, that
16 owner's going to have some awareness of what's
17 going on here.

18 But, you know, I feel like the canary in
19 the mine right now, because it's about ready to
20 blow, and we are -- this is a very dire
21 situation. And again, we can have choices. We
22 can do nothing, keep doing what we're doing right
23 now, and in about two or three years' time we'll

1 be in priority payment.

2 And I think that the more reasonable thing
3 to do would be to be proactive, to come together,
4 and I have confidence that both the owners and
5 operators, the consulting community, combined we
6 can sit down and work out some reasonable caps,
7 some reasonable expectations, because otherwise,
8 I mean we're -- they're going to be out of
9 business; right? Because if they're not getting
10 reimbursed by ELTF, they're not in business, and
11 that's not good for anybody.

12 And that's not where we want to go. We
13 want sites to continue to be cleaned up. We want
14 it done at a reasonable cost. Let's get back to
15 the national average. Let's get back to our
16 \$391,000 average that was there in 2010. You
17 know, our soil hasn't changed in the last eight
18 years, our groundwater hasn't changed in the last
19 eight years, so why is it now costing three times
20 as much to clean up the same dirt, the same water
21 that we were doing years ago?

22 It's because the generosity that's been
23 afforded between the Financial Assurance Board

1 and the legislature to the consulting community
2 to allow these sites to be cleaned up
3 unfortunately has been abused. And we can't
4 sugar coat it, but again, we can fix it. And the
5 choices are that simple.

6 And so, I can tell you right now, in the
7 next legislative session we're going to begin to
8 look at some very drastic changes. My hope would
9 be that we'd have consensus amongst all of the
10 stakeholders to go forward. But what we can't --
11 the current path and the current burn rate does
12 not allow us to do nothing.

13 So, with that, I'll be happy to answer any
14 questions, but I wanted to share with you our
15 concerns.

16 CHAIRMAN EHRMAN: Well, the Board
17 supports your proactive stance.

18 MR. BRAUN: I appreciate that. All
19 right. Thanks so much. I appreciate it.

20 CHAIRMAN EHRMAN: Anyone else that
21 would like to speak today?

22 (No response.)

23 CHAIRMAN EHRMAN: Okay.

1 Guys, motion to adjourn?

2 MR. FORSTER: So moved.

3 MR. COBB: Second.

4 CHAIRMAN EHRMAN: Thank you. All in
5 favor?

6 MS. LOGAN: Aye.

7 MR. FORSTER: Aye.

8 MR. NAVARRE: Aye.

9 MR. PRASAD: Aye.

10 MS. SMITH: Aye.

11 MR. COBB: Aye.

12 CHAIRMAN EHRMAN: Aye.

13 This Board meeting is closed. Thank you.

14 - - -
15 Thereupon, the proceedings of
16 August 9, 2018 were concluded
at 2:58 o'clock p.m.

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Thursday, August 9, 2018 in this matter and
8 transcribed by me.

9

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11

Lindy L. Meyer, Jr.,

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Notary Public in and

13

for the State of Indiana.

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15 My Commission expires August 26, 2024.

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