MINUTES
WATER QUALITY ASSURANCE REVOLVING FUND ADVISORY BOARD
Arizona Department of Environmental Quality Conf. Room 250, 1110 W. Washington Street, Phoenix, Arizona
February 28, 2003

BOARD MEMBERS IN ATTENDANCE:

Frank Corkhill
Lori Faeth
Karen Gaylord
Tamara Huddleston
David Kimball
Rick Lavis
Janet Marcus
Phil McNeely
Karen Peters for Karen O'Regan
Nancy Petersen for Karen Masbruch
Chuck Shipley
Lee Stein
Tom Suriano
Jim Vieregg

BOARD MEMBERS ABSENT:

Kelly Barr
Michael Conway
Will Humble
Kerri Ann Wade

The meeting was called to order at 9:05 a.m.

Action Items:

1. An Ad Hoc QBS Committee will be formed and will meet prior to the March Board meeting. The Committee will provide recommendations to the Board regarding the QBS statute at the March meeting.
2. ADEQ and ADWR will submit separate letters to the Board regarding recommendations and status of the compatible databases required by session law.

I. Welcome/Opening remarks/Administrative Issues

A. Chairman Lavis reminded the Board of the schedule for upcoming meetings; all meetings are scheduled for the last Friday of each month with the exception of December. There will be no meeting in November.

B. Chairman Lavis introduced and welcomed Lori Faeth of the Governor's Office and Frank Corkhill of ADWR as new Board members.

C. Chairman Lavis updated the Board on discussions with ADEQ regarding the ADWR automatic funding transfer. Mr. Guenther agreed to this legislation and to accountability on how ADWR is spending money. Mr. Guenther will provide the FY03 budget expenditures to the Board with expenditures by category and then will meet with the Board to work out the report format for future reports. Chairman Lavis thanked the new ADWR Director for working with the Board.

D. Chairman Lavis distributed a sign-up sheet for committee sign ups for Board members and requested the form be returned to him by the end of the meeting; the chairmen of the various committees will remain the same.

II. Approval of December 2002 and January 2003 Meeting Minutes - Mr. Shipley made a motion to approve the December 2002 minutes; Ms. Marcus seconded the motion. The minutes were approved. Mr. Shipley made a motion to approve the January 2003 minutes; Ms. Marcus seconded the motion. The minutes were approved.

Chairman Lavis explained how the QBS debate would run to the members of the audience and referred to handouts for detailed information. Chairman Lavis explained that members of the public may each use one minute for comments during the debate.

III. Department Report - Mr. McNeely went over the action items from the last meeting. The ASRAC contract which the Department uses to bid out site work is up for bid; the contract will be in effect for five years. Early response actions are progressing at Central and Camelback and Broadway-Pantano. There will be an Open House at Central and Camelback on Saturday, April 5 and a dedication ceremony for Broadway-Pantano on May 2. The Vulture Mill final remedy is on schedule. The public comment period for the PRAP for Estes Landfill expired on February 25.

Chairman Lavis asked Mr. McNeely if the Vulture Mill stakeholders are asking for more money for the ongoing site cleanup activities. Mr. McNeely confirmed that this is the case; the community wants to see ADEQ complete the total cleanup of the site, which would require approximately $2 million in additional funding.

A. NACEPT Committee Meeting - March 10-12 - Mr. McNeely informed the Board that the NACEPT Committee will be in town March 10, 11 and 12. ADEQ will participate in two panels on Tuesday afternoon. The first panel will focus on the history of the WQARF program and process, community involvement, and state/city relationships. The second will focus on the delisting and redevelopment of a portion of the South Indian Bend Wash Superfund Site and the role of the Voluntary Remediation Program in this cleanup. The group is also planning to attend up to three site visits on Wednesday.

B. Update on Preliminary Investigation Status and Criteria - Ms. Stone updated the Board on the Preliminary Investigation status and criteria. Since December, ADEQ has completed the screening process for 20 potential sites; six of these will be added to the Arizona Superfund Programs List (ASPL) for additional investigation. ADEQ hopes to finish all the remaining screenings by end the of March, and will then update ASPL.

IV. Committee Reports

A. Budget Committee - Mr. Shipley stated that the Committee met on February 19. ADEQ is on target with budget projects for expenditures; the Committee is anticipating working with approximately $8.5 million next year unless the budget situation changes. The Committee is

expecting approximately $700K in revenue, plus additional money from fees. Mr. Shipley stated that the Committee is looking at site specific information and budgets. The next meeting will be held on March 14. With regard to ADWR, Mr. Shipley stated that progress is being made; Mr. Guenther and his staff have been very helpful.

B. Ad Hoc PRP Review Committee - Ms. Gaylord reported that the PRP Review Report still in draft; she will complete the report this afternoon and send it to the Board.

C. Funding Priorities - Ms. Gaylord announced that she is in the process of setting a meeting date and time for this Committee to meet in the near future.

D. Legislative Committee - Chairman Lavis updated the Board on the Committee's activities. The Committee met on February 21; the Committee will become less active until the FY03 budget issue is resolved. The Department will provide advice as to how to proceed. Chairman Lavis referred to the amendment to the current striker bill, which includes information on changes in the automatic transfer of funding to ADWR.

Chairman Lavis announced a ten minute break at 9:35 a.m. The meeting resumed at 9:45 a.m.

1. QBS Debate - Mr. McNeely provided an overview of the issue and referenced the Department's 8/22/02 policy issue memo. Currently ADEQ must complete best efforts PRP searches, because 100% of the cost of the project is allocated based on proportionate share. QBS and financial hardship settlements are available to responsible parties who qualify. Under the current QBS program, ADEQ has received an average of $26K per settlement; the amount of liability exceeding 26K is orphan share. The WQARF program was designed with 66% cost recovery expected, but this percentage is much higher than what is actually being recovered. If the Department determines that the cost to recover money is greater than money that could be recovered, cost recovery is not appropriate. The Department has been trying to identify ways to recover additional money, such as changing the QBS provisions to allow for: (1) payments over time; (2) considering assets; and (3) recovering funds from insurance companies.

Mr. Kimball stated that cost recovery issues surrounding QBS settlements are especially important now because of budget cuts and the need to maintain the integrity of the program. If someone is settling for less money than they are responsible for, and they have insurance coverage, that asset should be utilized to offset the Department's and other PRPs' costs. If ADEQ cannot keep the program working, no one will have the benefits of a QBS and settling their liability. Mr. Kimball stated that he wants to hear from accountants as to improvements that could be made in the QBS program.

Mr. Vieregg stated that his position on the Board is to protect interests of small business and he is the co-author of the QBS statute. The QBS program has been very successful and has done everything that Legislature intended, allowing small businesses to settle quickly and inexpensively. Mr. Vieregg provided handouts of news articles on the success of the QBS

program. The QBS process is simple and efficient and doesn't require attorneys. Mr. Vieregg stated that Mr. McNeely had provided settlement amounts but did not provide corresponding costs; Mr. Vieregg stated that he wanted to know the numbers for the costs. The money from the settlements may never even be used at sites where QBSs have occurred. With regard to insurance, Mr. Vieregg stated that recovering funds from insurance companies would be especially difficult in Arizona because state laws are not clear; costs to recover against insurance companies are very high. Mr. Vieregg stated that he does not want to see the QBS law ruined by amendment.

Wendy Briggs of Steptoe and Johnson stated that she represents insurance companies in litigation. The costs of litigation drive up policy costs significantly; the by-product of going after insurance companies would be increased costs to the state and to companies for polices.

Mr. McNeely responded that Arizona has not recovered money from insurance companies because the current law does not allow it. With regard to sites where settlements have occurred but work has not yet been done, the Department does not have the resources to address all sites at once and has to prioritize work at sites by risk. Mr. Vieregg stated that he does not agree that the Department will eventually work on all of the sites on the Registry.

Mr. Stein asked whether the Department has examined the six settlements to see what the result would have been without any settlements and also asked why there have only been six settlements. Mr. Stein asked how the Department would obtain insurance proceeds after a company's liability is settled. Mr. McNeely stated that the Department currently cannot go after insurance proceeds after liability settled, so the law would need to be changed to allow for this. The Department has not looked at the six settlements to see what the result would have been without the settlements; the Department does not have the authority to ask for information to make those determinations.

Mr. Kimball stated that he has worked on settlements with insurance companies where, for example, the costs were less than $100K and $5 million was received. The Department would have to make business decisions on each case to determine if the settlement and insurance company being pursued made since. Ms. Gaylord stated that she doesn't think the Board is looking for major changes to QBS, but wants to refine the eligibility test. The current eligibility is too inclusive. Regarding the insurance issue, there will only be coverage at old sites and the coverage will have low caps; it will be unusual for the Department to go after large sums from insurance.

Mr. Vieregg expressed concern that the Department would not approve a QBS until a company assigned its policy to the Department and that the company would not have the benefit of a QBS until the claim was resolved. Mr. McNeely responded that this would not be the case; once the company assigned its insurance policy to the Department, its total liability would be settled. The Department would go after the insurance the rest of the company's share later. Mr. Vieregg expressed concern over what small business would have to deal with in discovery during

a lawsuit between the state and the insurance company. Mr. Shipley stated that his understanding is that some Board members want to look at small refinements to improve the QBS program. Ms. Huddleston stated that no one wants to put anyone out of business, and added that where there are multiple QBSs at the same site there would be more than one insurance policy which could yield more money. Mr. Vieregg stated that success means giving clients peace of mind, and reminded the group that the state received $99K in the settlement with Arcadia Cleaners. Mr. Kimball stated that there is no effort to do away with QBS, but to refine it so it does what was intended. Mr. Suriano stated that the Board wants to preserve a mechanism to save small businesses; private parties were supposed to pay for the majority of the WQARF program; it is in everyone's best interest to preserve the program and the remedy selection process. Ms. Gaylord stated that WQARF is in trouble; if the funding issues are not resolved, fair share liability is not going to survive, and will be replaced by joint and several liability again.

Chairman Lavis referenced the concept paper distributed prior to meeting and asked the Board to take an action. Options include: adopting the concept paper; vote to table; or preparing new legislative language and discussing in March. Mr. Vieregg suggested writing a response to the concept paper and providing the response to the Board to review both papers. Ms. Gaylord recommended selecting a group to study options B through F since there has already been extensive discussion on the options outlined in the paper. Mr. Vieregg stated that he wants a record of the response to the concept paper and will put together the written response in one week. Mr. Kimball recommended that a committee evaluate options B through F and allow people to comment on the options. Mr. Kimball also stated that the Board needs to look into accounting. Mr. Vieregg stated that he has problems in the assumptions in the concept paper. Mr. Shipley stated that the Chairman has the authority to appoint a committee to deal with the issue and to set deadlines. Ms. Peters agreed with Ms. Gaylord and Mr. Kimball to evaluate options B through F, but to also consider other ideas. Mr. Suriano stated that there needs to be a deadline to make a decision on the issue; there is not much time to act. Mr. Vieregg stated that he wants to be member of the committee and wants to ask NFIB to participate. Chairman Lavis asked the Board to let him know who wants to participate and stated that there will be a deadline to report recommendations at the next Board meeting.

2. Omnibus Bill - Chairman Lavis stated that this is not a Board bill since the Board has not taken position on this legislation yet. Mr. Kimball working on potential legislative changes; had to get something in by a deadline that could accept additional changes during session. Mr. Vieregg referenced A.R.S. §289.04(E) and questioned the Board's authority to engage in lobbying work; he wants an AG opinion as to whether the Board or members have authority to lobby for the bill. Mr. Kimball stated that it is premature for Mr. Vieregg to seek this opinion since the Board doesn't have relationship to bill yet. If the Board can not lobby for the bill, individuals could lobby as appropriate.

Chairman Lavis stated that this bill presents two important issues: ADWR $800K and elimination of the annual report. Mr. Vieregg stated the Mr. Cunningham indicated that the Department has problems with portions of bill (scoring). Ms. Gaylord suggested that the Board

leave the bill as a Chamber bill, not as the Board's bill. Ms. Gaylord will schedule a meeting to address the threshold issue and the possibility of identifying a risk threshold using the current E&E model. The scoring model needs to be revised. Mr. Kimball stated that he hoped the revisions to the E&E model would provide a level of risk threshold that justifies inclusion on Registry. Sites should not be automatically added to the Registry just because they have a score; there needs to be a risk threshold. Mr. Vieregg stated that this bill has not been endorsed by the Arizona Chamber or the Phoenix Chamber. Chairman Lavis informed the Board he wants to testify on the ADWR and annual report portions of the bill. Mr. Stein made a motion to this effect; Ms. Faeth seconded the motion; Mr. Vieregg abstained. The motion was approved.

V. Other Business - Chairman Lavis referred to the ADWR budget proposal; regarding the database portion compatibility, ADEQ and ADWR need to have compatible databases. ADEQ and ADWR need to submit letters to the Board with recommendations and status on the session law requirements regarding the database.

VI. CAB Report - Mr. Philip Lagas of the West Van Buren Community Advisory Board addressed the Board. Mr. Lagas stated that ADEQ is doing a great job of providing information to the CAB and taking suggestions. One issue facing the CAB is keeping public interest up so CAB members and the public will continue to attend the meetings. Over the years, less and less people continue to be interested in what is going on and the CAB has gotten smaller. Since this is a long-term project there is not a lot for the CAB to do at this point. The quorum issues are being addressed: ADEQ is sending out mailers and CAB applications to recruit new CAB members. Ms. Peters asked whether Mr. Bob McCain, the municipal water representative, is also a resident of the area. Mr. Lagas responded that he did not think so. Chairman Lavis thanked Mr. Lagas for attending the Board meeting and for his presentation.

VII. Public Comment - Ms. Kati Long of SAIC asked if the NACEPT meetings are going to be open to the public and if there is an agenda available. Mr. McNeely replied that the meeting is open to the public and that we can provide an agenda. Ms. Gaylord added that the meeting was published in the Federal Register. ADEQ will forward a copy of the notice to Ms. Long.

Ms. Samantha Fern representing Honeywell suggested that the Department look at the idea of insurance proceeds/assigns to state with regard to all parties, not only QBS. Also, regarding the issue of two bad years, maybe a provision to look at the two years prior to those two could be added and considered in determining if a company qualifies for a QBS. Ms. Fern asked if 10% of a companies gross income is too much. Regarding the 2264 striker bill, Ms. Fern thought the Legislative Committee had approved the striker minus the threshold language, but is glad to hear that is not the case.

VIII. Adjournment - Ms. Peters made a motion to adjourn; Mr. Vieregg seconded the motion. The meeting was adjourned at 11:35 a.m.