

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO REPEAL AND
REPLACE RULE 19.15.29 NMAC; STATEWIDE. CASE NO. 15959

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

June 7, 2018

Volume 3 of 3

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Tuesday, June 5 through Thursday, June 7, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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1 (9:08 a.m.)

2 CHAIRWOMAN RILEY: Good morning, everyone.
3 This is day three. I think where we are this morning is
4 we are going to head into deliberations. We've
5 concluded all the testimony from the witnesses and all
6 parties have closed their case. So we have a quorum
7 here and we're going to start our deliberations.

8 Mr. Brancard, do you have anything you'd
9 like to say before we start --

10 MR. BRANCARD: No. I think --

11 CHAIRWOMAN RILEY: -- about your document
12 you've provided.

13 MR. BRANCARD: Oh. I've provided a
14 document to the Commission that attempts to start with
15 the latest version of the proposal, which would be NMOGA
16 Exhibit D combined with OCD Exhibit 4, and then a few
17 other changes that were discussed by the parties and the
18 Commission late yesterday. So I'm trying to incorporate
19 that into one document. It also includes Cardinal Labs'
20 proposed change to the table.

21 So I would treat this as sort of the final
22 proposal that's before the Commission, for the
23 Commission to review in deliberations, along with any
24 other changes that other parties have submitted.

25 CHAIRWOMAN RILEY: Thank you.

1 All right. So how about we just walk
2 through this step-by-step, take a look at all these
3 changes?

4 MR. BRANCARD: I apologize it's
5 double-sided. My printer went to default.

6 CHAIRWOMAN RILEY: Ready?

7 COMMISSIONER BALCH: Sure.

8 CHAIRWOMAN RILEY: So starting with
9 definitions, the first change I see is in A.(1) --
10 A.(2)(a) -- sorry -- "results in a fire or is the result
11 of a fire," with "causes" stricken. Is everybody okay
12 with that?

13 MR. BRANCARD: Just so everyone's clear,
14 this proposal, as it originated, is a complete repeal
15 and replacement of the existing Rule 29.

16 CHAIRWOMAN RILEY: Uh-huh.

17 MR. BRANCARD: So there is some language,
18 particularly in paragraphs 7, 8, 9 and 10, that comes
19 from the original rule, but you can't tell because they
20 have done this as a complete repeal and replace.

21 CHAIRWOMAN RILEY: We just need to walk
22 through --

23 MR. BRANCARD: So that's not the only
24 change to the rule. There are other changes in there,
25 if you look at the original one.

1 CHAIRWOMAN RILEY: Okay. Thank you.

2 MR. BRANCARD: Section 29 had a definition
3 of "Major release" and "Minor release, and there are
4 just some small changes to the definition of "Major
5 release," particularly in A.(2). And then they add the
6 definitions of "Responsible Party" and "Wellstream."

7 COMMISSIONER BALCH: And "Release" itself
8 is defined elsewhere.

9 MR. BRANCARD: Yes. "Release" is defined
10 in 19.15.2.

11 CHAIRWOMAN RILEY: So perhaps the best way
12 is to just take that "Major release" definition and
13 address that. Does anyone have an issue with these
14 changes from the old definition and then with the
15 additional changes made in --

16 COMMISSIONER BALCH: I guess the only thing
17 I'd like to talk about on this definition of "Major
18 release," the use of "may with reasonable probability"
19 in A.(2), B and C.

20 CHAIRWOMAN RILEY: Are you concerned just
21 about the --

22 COMMISSIONER BALCH: It's just ambiguous.
23 That's all.

24 CHAIRWOMAN RILEY: What would alternative
25 language look like?

1 COMMISSIONER BALCH: Well, I'm not certain.
2 But in Rule 17, for example, you have a series of
3 setbacks that define if you're close enough to something
4 you need to worry about, for example, 500 feet from a
5 stream.

6 COMMISSIONER MARTIN: But those are
7 included in another part of the rule here, those
8 setbacks, saying that those have to be treated
9 differently, more stringently.

10 COMMISSIONER BALCH: Right.

11 CHAIRWOMAN RILEY: And I think a setback
12 refers to something that you're doing that has a defined
13 place in the world, where this is a moving -- you know,
14 a release can move in any direction depending on the
15 terrain or gravity, basically. So it's probably
16 difficult. I would imagine that the committee probably
17 tried to get a stronger definition but didn't know how
18 to get there.

19 COMMISSIONER BALCH: My only concern using
20 an unambiguous term like "may with reasonable
21 probability" is that the three of us might come up with
22 a different answer for that. And we may come up with a
23 different answer than the operators or the responsible
24 party.

25 COMMISSIONER MARTIN: Well, I guess I have

1 a question for Bill.

2 Is that a legally acceptable term in this
3 type of use?

4 MR. BRANCARD: Well, let me say a couple of
5 things. Those terms are terms that you often see in
6 rules. And, of course, they're not specifically
7 defined, but they are terms that people are used to
8 using.

9 Clearly, a specific distance would be much
10 easier to figure out, but I think, just to make the
11 point during the hearing, the parties made the point
12 that they specifically chose not to really try to
13 rethink these definitions here. That was not part of
14 what their goal was, that they were sort of willing to
15 live with those two concepts of major and minor release.
16 They only, at this point, impact the timing and location
17 of notice. And so I think that they were sort of
18 resistant -- NMOGA, particularly, was resistant to
19 trying to dig into these changes. That's maybe the
20 subject of a future rulemaking.

21 CHAIRWOMAN RILEY: Well, and from the
22 previous rule, it just says "will reach a watercourse."
23 And I think this is better, "may with reasonable
24 probability," because how do we know.

25 COMMISSIONER MARTIN: I agree.

1 COMMISSIONER BALCH: And C is not changed,
2 however.

3 MR. BRANCARD: True. Only B got changed.

4 CHAIRWOMAN RILEY: And A.

5 COMMISSIONER BALCH: Legally, what does
6 "may with reasonable probability" mean?

7 MR. BRANCARD: I mean, it's something
8 that's more likely than not to occur, probably. It's
9 not just something that has a real outside chance of
10 occurring.

11 COMMISSIONER BALCH: All right. Well, if
12 everybody else is happy with it, I'm okay with it.

13 And D, "substantially damages property or
14 the environment," same concern.

15 CHAIRWOMAN RILEY: That's similar language
16 to the existing rule. There is a rule that starts
17 "results in substantial damage to property or the
18 environment." So "results in" is taken out.

19 COMMISSIONER BALCH: We'll let the courts
20 or other entities determine if something is improper,
21 reasonable probability or substantial judgment.

22 CHAIRWOMAN RILEY: Okay.

23 (3) is the same as the existing.

24 (4) looks like it's the same. No, it's
25 not. Existing (4) is "may with reasonable probability

1 be detrimental to fresh water or exceeds the standards,"
2 and then it refers to another section. It's been
3 replaced with "a release of a volume that may with
4 reasonable probability be detrimental to fresh water."
5 So instead of the standard language, it says "fresh
6 water." I'm good with that.

7 COMMISSIONER BALCH: Generally a major
8 release.

9 CHAIRWOMAN RILEY: Ed, are you good with
10 that?

11 COMMISSIONER MARTIN: I like the new
12 language better, actually.

13 CHAIRWOMAN RILEY: Are you good with that,
14 Bob?

15 COMMISSIONER BALCH: As good as I am with
16 the other one.

17 CHAIRWOMAN RILEY: Okay. Moving on to B,
18 "Minor release."

19 COMMISSIONER BALCH: Well, this brings up
20 another small point that I suspect will not go away
21 either. But the point on defining major or minor
22 releases is really only for reporting, when you report
23 it to the Division. A minor release -- if you have a
24 minor release, you have an additional two weeks to
25 report it instead of the one day that you have with a

1 major release. 3.4 releases per day on average. I'm
2 not sure if it's an undue burden just to have all
3 releases reported within a set amount of time.

4 CHAIRWOMAN RILEY: What I heard in
5 testimony was the concern is that if they -- if they get
6 that 24-hour notice of every release, then there is no
7 distinction for the staff to know which one may require
8 them to run out and go check or treat as a critical
9 release.

10 COMMISSIONER BALCH: Well, the 24-hour
11 notice should come with a volume.

12 COMMISSIONER MARTIN: I think, Bob -- say
13 anything over 24 barrels should be reported, right?

14 CHAIRWOMAN RILEY: You're saying anything
15 over five?

16 COMMISSIONER MARTIN: I mean five.

17 COMMISSIONER BALCH: The concept of
18 reportable versus nonreportable.

19 COMMISSIONER MARTIN: Right.

20 COMMISSIONER BALCH: I don't know if it's
21 significant. I don't know why you would wait an
22 additional two weeks to report a small one.

23 COMMISSIONER MARTIN: With the idea that
24 the smaller ones are less threatening strictly on a
25 volume basis.

1 COMMISSIONER BALCH: I mean, the concern
2 that yes, they are going to be less important, but every
3 day, you're going to be to getting reports of releases,
4 and the only thing that would tell you that one was
5 major and one was minor was if it was told -- if you
6 were told it was a major one, right, versus a minor one?
7 So in a given period of time in a calendar year, all of
8 those releases will be reportable. It doesn't change
9 the volume of release reporting that comes in that has
10 to be processed by the OCD.

11 COMMISSIONER MARTIN: Sure. But it changes
12 the priority each district applies to a particular
13 release on a given day, which I think has some merit.

14 CHAIRWOMAN RILEY: The other effect by
15 doing that would be to the operator, of having that
16 burden of getting those in, which I guess it's on
17 discovery, not so much when it happened. But it just --
18 it's going to put a higher burden on them to make sure
19 everything gets reported within 24 hours.

20 COMMISSIONER BALCH: Well, I think that --
21 the important part. So the other important part is it
22 does put a tag on the release when it goes to --

23 CHAIRWOMAN RILEY: So repeat -- repeat
24 that. Are you saying that it should be the five barrels
25 and over?

1 COMMISSIONER MARTIN: No. I'm saying stick
2 with the old scheme of things about minor releases,
3 reporting requirements as they existed before, major
4 releases and reporting requirements as they existed
5 before, because the districts will have a better idea of
6 what's assigned to the release report.

7 COMMISSIONER BALCH: It has a label on it,
8 major versus minor.

9 CHAIRWOMAN RILEY: Uh-huh.

10 COMMISSIONER BALCH: We accept that.

11 MR. BRANCARD: There's also a change to
12 minor release which removed a conflict that was in the
13 previous rule, because the previous rule had just
14 distinguished between five and 25 barrels, but, in fact,
15 there are categories of major releases that are less
16 than 25 barrels if they hit any of those things in (2),
17 (3) or (4). So they had to add the language "which is
18 not a major release."

19 COMMISSIONER MARTIN: Right.

20 CHAIRWOMAN RILEY: I like that.

21 MR. BRANCARD: So there was a conflict at
22 that point between those two definitions that got
23 removed.

24 CHAIRWOMAN RILEY: Okay. Everybody good
25 with B?

1 COMMISSIONER BALCH: Uh-huh.

2 COMMISSIONER MARTIN: Yeah.

3 CHAIRWOMAN RILEY: C is brand-new.

4 COMMISSIONER BALCH: I'm actually kind of
5 happy that there is a concept of responsible party. An
6 interesting -- problem with that showed up yesterday
7 during Cardinal's testimony, because only the
8 responsibility -- responsible party is able to ask for
9 variances --

10 CHAIRWOMAN RILEY: Uh-huh.

11 COMMISSIONER BALCH: -- which is why they
12 came and asked us to put that into their 4500 CLB into
13 the rule, because they're not able to ask for that kind
14 of variance. They have to individually have their
15 operators do that. I don't think that's a major
16 problem, but I think it's something that we ought to pay
17 attention to in the other parts of the rule where
18 "responsible party" is being used to make sure there is
19 not an unintended consequence.

20 CHAIRWOMAN RILEY: Uh-huh. And as far as
21 the operator goes, I mean, the operator is the one that
22 has the permission out there. They're conducting the
23 activity, and they hire subs to do particular things for
24 them. And so I think it's important to keep the burden
25 on the operator to get it cleaned up, and then let them

1 deal with assigning liability and working that out with
2 their subs as they go, but to get things cleaned up. So
3 I like it. I think it's a good change.

4 Are you good?

5 COMMISSIONER MARTIN: Yes.

6 COMMISSIONER BALCH: So is there a case --
7 in the second part of that definition, "The division, in
8 its sole discretion, may also consider a person causing
9 the release, or controlling the location of the release
10 as the responsible party." So I'm not sure how that
11 might apply, but perhaps somebody running over a
12 pipeline and causing the leak but then they don't have
13 permission to be there to remediate it.

14 CHAIRWOMAN RILEY: Why wouldn't they have
15 permission to be there? I mean, in the pipeline
16 scenario, you usually have a pipeline company with a
17 right-of-way, and they're gathering for multiple
18 operators. I think that's where that --

19 COMMISSIONER BALCH: Perhaps that's a bad
20 example.

21 COMMISSIONER MARTIN: Well, pipeline on
22 location, on well location -- I don't think right-of-way
23 is required.

24 COMMISSIONER BALCH: Sure.

25 COMMISSIONER MARTIN: That's a case where

1 the pipeliner would not have --

2 COMMISSIONER BALCH: Or you have a service
3 company come out to your site and they back their truck
4 into your tank.

5 CHAIRWOMAN RILEY: Uh-huh.

6 COMMISSIONER BALCH: In theory, you could
7 make them the responsible party, but they would have no
8 ability to remediate that damage. It still would be the
9 operator who would have to take care of the problem.

10 CHAIRWOMAN RILEY: Uh-huh.

11 COMMISSIONER MARTIN: Right.

12 COMMISSIONER BALCH: I guess I'm trying to
13 figure out when you would be able to apply that
14 distinction.

15 CHAIRWOMAN RILEY: Again, I think it's in
16 the scenario where you have a midstream company with a
17 CDP or something that is not under the control of an
18 operator. That's where you might have to go to someone
19 else.

20 MR. BRANCARD: Well, the way -- the way the
21 current rule is written, there is no definition. So as
22 a result, every other sentence begins with the phrase,
23 "The person operating or controlling either the release
24 or the location of the release shall." So we've
25 clarified that down two words, first of all. But that

1 sort of vaguely sort of says well, it's the operator or
2 the person controlling the release or controlling the
3 location. So it creates a whole series of entities that
4 could be. Whereas, this one here, it creates the
5 default of the operator, and then if there is somebody
6 who is sort of in a better position to do the cleanup,
7 the agency can assign that. So you have somebody who,
8 you know, backs into a tank, and the operator's like, "I
9 don't want to deal with this, you know, but I'll give
10 them access to clean it up."

11 COMMISSIONER BALCH: Okay.

12 MR. BRANCARD: They can do that. Plus, you
13 will have situations where there is no operator, in a
14 sense. Somebody just dumps on a piece of grazing land,
15 you know, or spills something. Well, you've got to get
16 the person who did the spill in that case.

17 COMMISSIONER MARTIN: Right.

18 MR. BRANCARD: You know, you're not going
19 to get the grazing lessee to do that --

20 COMMISSIONER MARTIN: No.

21 MR. BRANCARD: -- clean it up, you know, or
22 the land office, you know.

23 COMMISSIONER MARTIN: Yeah.

24 MR. BRANCARD: And "operator" is broadly
25 defi- -- I mean, we view operator as kind of a leasehold

1 operator in the common parlance, but if you look at the
2 definition of "operator," it's broadly defined to be the
3 person in charge of a facility. So if it's just a tank
4 battery, you know, outside of a leasehold, then the
5 person running the tank battery, they're the operator.
6 That's sort of the benefits. Plus, you know, it just
7 saves a lot of space to have two words all through the
8 rule.

9 COMMISSIONER MARTIN: I agree.

10 COMMISSIONER BALCH: Okay. I think that's
11 sufficiently clear.

12 CHAIRWOMAN RILEY: Item D is also new. I'm
13 good with it.

14 COMMISSIONER BALCH: So is wellstream going
15 to include flowback from a frac job?

16 COMMISSIONER MARTIN: It's coming from the
17 wellbore. I would say yeah. It may not originate at
18 the wellbore, but it's been through the wellbore.

19 COMMISSIONER BALCH: If it comes out the
20 wellbore, it fits the wellstream definition.

21 COMMISSIONER MARTIN: Right.

22 COMMISSIONER BALCH: I'm not sure it's
23 important. I just think it's a distinction.

24 COMMISSIONER MARTIN: Right.

25 CHAIRWOMAN RILEY: Does that mean add it

1 or --

2 COMMISSIONER BALCH: No, no. I was just
3 wondering if it was going to include flowback, which
4 does change the chemical properties that are coming back
5 out. We all know that frac fluid is largely pretty
6 innocuous compared to the saltwater that's going to be
7 coming back with it and the oil.

8 I guess I would just like to make sure we
9 understand what the intent of using the word
10 "wellstream." I suspect, as in the previous definition,
11 we're trying to create a bucket of potential fluids and
12 avoid repetition of --

13 MR. BRANCARD: Possibly, but I think the
14 term is rarely used in the rule.

15 COMMISSIONER BALCH: One place?

16 MR. BRANCARD: It may just be used in one
17 place, that I saw.

18 COMMISSIONER BALCH: Well, if it's only
19 used in one place, we don't necessarily need a
20 definition.

21 COMMISSIONER MARTIN: I can't remember
22 where it appears.

23 MR. BRANCARD: The term "release" is used
24 far more often, which covers a much broader universe.

25 CHAIRWOMAN RILEY: It's got to be in here

1 somewhere.

2 COMMISSIONER BALCH: I saw it one place. I
3 tend to agree that --

4 MR. BRANCARD: I know -- because they
5 actually had it capitalized.

6 CHAIRWOMAN RILEY: We need a computer with
7 search.

8 COMMISSIONER BALCH: Actually, we covered
9 that last night, didn't we?

10 MR. BRANCARD: Yes. So 11E -- this is --
11 this is the part of the rule where we're trying to
12 determine what standards apply -- if standards other
13 than Table 1 may apply to a release, because it includes
14 contaminants that are not normally found in a
15 wellstream.

16 COMMISSIONER MARTIN: Where is that?

17 MR. BRANCARD: 11E.

18 CHAIRWOMAN RILEY: Page 3.

19 MR. BRANCARD: 11A.(5)(e). Sorry.

20 COMMISSIONER MARTIN: Okay.

21 COMMISSIONER BALCH: Differentiate your
22 frac -- frac fluid and flowback or other things like
23 that because that's the only place where it's used.

24 MR. BRANCARD: The only place I saw it, but
25 I didn't do a search.

1 COMMISSIONER BALCH: Yes. That's the only
2 place it's used.

3 CHAIRWOMAN RILEY: Are we good with
4 "wellstream"?

5 COMMISSIONER BALCH: I know it's been used
6 once -- a definition.

7 COMMISSIONER MARTIN: If it's only used
8 once -- it's kind of a new concept. I think you need to
9 leave it. I don't remember that term being used
10 anywhere else in the rules, but maybe not.

11 MR. BRANCARD: It's not a defined term.
12 "Wellbore" is a defined term.

13 CHAIRWOMAN RILEY: I mean, it's six one
14 way, half a dozen the other. You could take out and put
15 it over here, but I don't have a problem with it being
16 in the definitions.

17 COMMISSIONER MARTIN: Nor do I.

18 COMMISSIONER BALCH: There is a variety of
19 things that you put into a well to treat it, starting
20 with a frac job.

21 COMMISSIONER MARTIN: Right.

22 COMMISSIONER BALCH: If you're talking
23 about Wolfcamp, you're talking mostly slickwater. It's
24 usually using friction reducers, going to be flowback.
25 But once it enters the well, then it becomes part

1 wellstream. Whereas, 11E is trying to differentiate
2 between things that would typically have measurements on
3 Table 1 and things that may require you to go to another
4 place to look up what those hazards are and what they
5 are and what the limits should be. That's the important
6 difference.

7 COMMISSIONER MARTIN: I agree.

8 COMMISSIONER BALCH: So -- right. So the
9 concept of wellstream is anything that goes into the
10 well, comes back out, it's part of the wellstream.

11 COMMISSIONER MARTIN: And I like that
12 concept. I like describing that concept in the rule.

13 MR. BRANCARD: The only question is whether
14 the way it's used, it's sort of circular. I mean, how
15 it's used in that sentence is sort of -- it's basically
16 giving you the definition of "wellstream."

17 CHAIRWOMAN RILEY: Because it does not
18 include water, gas or other fluids.

19 MR. BRANCARD: That is the wellstream.

20 CHAIRWOMAN RILEY: Uh-huh.

21 COMMISSIONER BALCH: Primarily. Well, does
22 it include suspended constituents?

23 MR. BRANCARD: Well, other fluids.

24 COMMISSIONER BALCH: Those would be solids
25 or could be dissolved things, too.

1 I guess I'm wondering if (e) is any less
2 useful if you stop it after "if a known release of other
3 oil field related chemicals occurs that is not included
4 in Table 1 of 19.15.29.12 NMAC," (ii) and (iii). Do you
5 really need to have "does not include oil, gas" -- do
6 you need that part, "oil field related chemical"?

7 MR. BRANCARD: Oh, I think the way I read
8 (e) is they're trying to say if it's not a mixture of
9 the wellstream and other contaminants, it is just the
10 other contaminants, then these apply.

11 COMMISSIONER BALCH: Right. Okay. Yeah, I
12 see that.

13 CHAIRWOMAN RILEY: And I think there was
14 testimony to that effect, that if they had a spill of a
15 chemical, you know, the actual wellstream that happened
16 on location --

17 COMMISSIONER BALCH: Maybe we ought to go
18 back to the definition of "release" in -- 5.2, you said?
19 After all, that's what we're talking about today, right?
20 "Release means breaks, leaks, spills, releases, fires or
21 blowouts involving oil, produced water, condensate,
22 drilling fluids, completion fluids or other chemical or
23 contaminant or mixture thereof, including oilfield waste
24 and gases to the environment." So it's pretty broad.

25 Yup. It really seems like what it is

1 trying to say is if a chemical truck headed to a well
2 site, that's a release of that would not fall into Table
3 1.

4 MR. BRANCARD: Right. If they had a
5 separate barrel of chemicals, solvents, whatever on-site
6 and that broke open and released, that you have to treat
7 it differently because you're going to have different
8 contaminants; therefore, there are different cleanup
9 standards for that. And then below (e), it lists the
10 various possibilities for what standards you would use.

11 I guess the question is: Are we
12 comfortable with the use of "wellstream"?

13 COMMISSIONER BALCH: "Release" is already
14 used in the first part of the sentence of (e) and --
15 broad definition.

16 MR. BRANCARD: Uh-huh.

17 COMMISSIONER BALCH: So let's see.

18 MR. BRANCARD: We're back to 7D. Do we
19 want to keep the definition of "wellstream"?

20 COMMISSIONER MARTIN: I vote yes, although
21 it is six, one-half dozen to me. I see no reason to
22 take it out.

23 CHAIRWOMAN RILEY: I'm comfortable with it
24 because yes, we do talk about including oil, gas,
25 produced water, other fluids within (e), Subparagraph

1 (e), and then they say "from the wellstream." I
2 think -- I think their concern was just using that term
3 "wellstream" and needing to make sure it was defined --

4 COMMISSIONER MARTIN: Right.

5 CHAIRWOMAN RILEY: -- so there wasn't any
6 confusion about what wellstream meant. But I'm okay
7 with how it's written.

8 MR. BRANCARD: I mean, we can get back to
9 (e) later as we go through the rule.

10 COMMISSIONER BALCH: Yeah. I think we hang
11 on to it for now and talk about it later.

12 CHAIRWOMAN RILEY: (E) or (d)?

13 COMMISSIONER BALCH: 11E. Get back to it.

14 CHAIRWOMAN RILEY: All right. "Releases."
15 I like the addition of "Requirements." I think this
16 cleans it up a lot.

17 COMMISSIONER MARTIN: I agree.

18 COMMISSIONER BALCH: Yeah. So that
19 scratches off about 12 of my comments.

20 CHAIRWOMAN RILEY: Sweet. Oh, I said that?

21 COMMISSIONER BALCH: It's not about how
22 fast we get it done. It's about how right we get it
23 done.

24 CHAIRWOMAN RILEY: I agree (laughter).

25 So we're all good with A?

1 COMMISSIONER BALCH: Assuming the numbering
2 is all correct. We should double-check that at some
3 point, right?

4 MR. BRANCARD: Yes. We will be checking
5 all the cross-references before we file the rule.

6 COMMISSIONER BALCH: That's all I could
7 have asked for.

8 MR. BRANCARD: I made a few cross-reference
9 changes last night. You'll see them in there. But
10 there will be another further check later, and we will
11 run this version past the Records Center, who will do
12 their own proofread.

13 CHAIRWOMAN RILEY: I'm good with one --
14 paragraph one, "Source Elimination and Site Security."

15 COMMISSIONER MARTIN: Are you on 8B.(1)?

16 CHAIRWOMAN RILEY: Uh-huh.

17 COMMISSIONER MARTIN: You're okay with B?

18 CHAIRWOMAN RILEY: Well, I was kind of
19 walking through what they have to do.

20 COMMISSIONER MARTIN: Are you okay with
21 "Initial Response," B?

22 CHAIRWOMAN RILEY: Uh-huh. And I was on
23 (1), "Source Elimination and Site Security."

24 MR. BRANCARD: So this -- this is -- B --
25 8B is entirely new language. It does not come from the

1 previous rule. I don't think there was a lot of
2 discussion about this section. It didn't seem to be
3 controversial.

4 CHAIRWOMAN RILEY: And "Containment" is
5 good.

6 MR. BRANCARD: I will say the one issue --
7 I may have raised it or one or more of you may have
8 raised it, which is how -- how are the actions in 8B
9 documented? And I think I asked a question about that,
10 and the response was sort of, "Well, that'll go in the
11 C-141." Okay? It doesn't say that here, but --

12 COMMISSIONER BALCH: Or some reporting that
13 never existed.

14 COMMISSIONER MARTIN: A proper C-141 is
15 required later on, though.

16 MR. BRANCARD: Right. So the 15 days, they
17 have to do it the first time they do it. I mean,
18 they're going to do various updates to the C-141 through
19 the process, but the first one is still 15 days after
20 the release. Presumably, all these activities will have
21 occurred. I think that was the response to the question
22 that was asked, will occur during those first 15 days
23 and could be documented in that C-141.

24 COMMISSIONER MARTIN: Right. I think
25 that's the normal course.

1 MR. BRANCARD: And the general comment here
2 is, while we're providing a lot more details about
3 releases and responses to releases, there is still a lot
4 that will rely on what the form requires.

5 COMMISSIONER MARTIN: Right.

6 COMMISSIONER BALCH: Which can change at
7 the discretion of the Division.

8 MR. BRANCARD: Correct.

9 COMMISSIONER MARTIN: Right.

10 Where are you at?

11 CHAIRWOMAN RILEY: (3), "Site
12 Stabilization."

13 COMMISSIONER MARTIN: Are you okay with
14 "Containment"?

15 CHAIRWOMAN RILEY: Uh-huh.

16 Are you good with "Containment"? You are?

17 COMMISSIONER BALCH: Yeah. Give me one
18 more minute.

19 Like Bill was just saying, there is nothing
20 to document that, but they're responsible for it. So
21 my -- I guess my -- my one concern with this being a
22 reporting requirement is that it may cause delayed
23 action. This is specifically telling them that they're
24 supposed to do that right away.

25 COMMISSIONER MARTIN: Right.

1 COMMISSIONER BALCH: That's really on them.
2 That's a risk if they delay something.

3 COMMISSIONER MARTIN: True.

4 MR. BRANCARD: All right. So the beginning
5 of B says, "The responsible party must take the
6 following immediate actions...."

7 COMMISSIONER BALCH: Right, as long as it
8 doesn't cause safety problem.

9 MR. BRANCARD: Right.

10 COMMISSIONER BALCH: I think that's all
11 right.

12 COMMISSIONER MARTIN: You're okay with (1)
13 through (4)?

14 COMMISSIONER BALCH: I'm up to (3)
15 (reading).

16 This "recoverable's product," I'm wondering
17 if we need to change that term a little bit, in (3).

18 COMMISSIONER MARTIN: That was where you
19 wanted to add something like "remove contaminant" --
20 "remove stained soil."

21 COMMISSIONER BALCH: I don't know what to
22 put in there exactly. I'm just not sure that we're
23 covered with "product."

24 MR. BRANCARD: It's defined.

25 COMMISSIONER BALCH: Most of the product in

1 the case of an oil spill is going to be the oil.

2 COMMISSIONER MARTIN: It's the free
3 liquids.

4 COMMISSIONER BALCH: But we're already
5 referring to the free liquids right before that.

6 I don't suppose there is a definition for
7 "recoverable product"?

8 MR. BRANCARD: There is a definition of
9 "product."

10 COMMISSIONER BALCH: What is that?

11 MR. BRANCARD: It means "a commodity or
12 thing made or manufactured from oil and gas and
13 derivatives of oil and gas, including," and then there
14 is a long list.

15 COMMISSIONER BALCH: My original concern
16 with that language was that it would allow you to not
17 pick up other stuff that you could pick up.

18 COMMISSIONER MARTIN: Right.

19 COMMISSIONER BALCH: That's taken care of
20 by (4), immediately start remediation.

21 COMMISSIONER MARTIN: Okay.

22 COMMISSIONER BALCH: I guess I'm not sure
23 if you need "and recoverable product" at all. "Must
24 recover any free liquids...." I think they're probably
25 talking about solids in that case. So say it's a frac

1 flowback --

2 COMMISSIONER MARTIN: Right.

3 COMMISSIONER BALCH: -- and you've got a
4 mountain of sand.

5 COMMISSIONER MARTIN: Right.

6 COMMISSIONER BALCH: You can pick that up.

7 CHAIRWOMAN RILEY: Maybe it needs to be
8 "recoverable material" instead of "product," because
9 material can include sand and whatever. Because I think
10 that's the point, what can you get up right away without
11 excavation. What can you --

12 COMMISSIONER BALCH: I think pretty much
13 once you start to scrape and dig, you're remediating.

14 MR. BRANCARD: Right. I mean, my sense is
15 this is focused on the liquid sitting on the surface
16 that you can get at immediately.

17 COMMISSIONER BALCH: Sure. But also
18 liquids can become solid. So it's some oils at ambient
19 temperature, a wax, for example.

20 MR. BRANCARD: So that would be the
21 recoverable product --

22 COMMISSIONER BALCH: Right.

23 MR. BRANCARD: -- as opposed to any liquid,
24 which is just -- a pond of flowback water would be a
25 free liquid.

1 COMMISSIONER BALCH: Right.

2 MR. BRANCARD: It's not a product because
3 it's not oil and gas.

4 COMMISSIONER BALCH: So this is a product
5 because it's oil and gas, but the sand -- that's the
6 question. That's probably also not causing any damages.

7 MR. BRANCARD: Yeah. And if it is
8 contaminated, now you're doing remediation, which is
9 covered under (4).

10 COMMISSIONER BALCH: Which is the very next
11 step, so --

12 MR. BRANCARD: Right. So it's clearly
13 broader than just trying to pick up petroleum products
14 on the surface.

15 COMMISSIONER BALCH: Yeah.

16 MR. BRANCARD: You're picking up any
17 liquids.

18 COMMISSIONER BALCH: I kind of like your
19 idea of replacing the word "product," which has a
20 definition, with "materials," so any other material you
21 could pick up.

22 COMMISSIONER MARTIN: Okay.

23 CHAIRWOMAN RILEY: Okay.

24 COMMISSIONER BALCH: Is there any problem
25 using the word "materials"?

1 MR. BRANCARD: It's not defined.

2 CHAIRWOMAN RILEY: How about "stuff"?

3 COMMISSIONER MARTIN: "Stuff" is good.

4 COMMISSIONER BALCH: This would be anything
5 that's on top of the surface that you can pick up or --

6 COMMISSIONER MARTIN: So we're changing it.
7 You're adding "material"?

8 COMMISSIONER BALCH: I would say "material"
9 instead of "product." Product has a definition in here.
10 It's actually -- it's derived from, not related to.

11 MR. BRANCARD: Right.

12 COMMISSIONER BALCH: And then I think
13 "Remediation" is great.

14 CHAIRWOMAN RILEY: Number (4)?

15 COMMISSIONER BALCH: Yeah.

16 CHAIRWOMAN RILEY: Are you guys ready to go
17 to "Release Notification"?

18 COMMISSIONER MARTIN: Uh-huh.

19 COMMISSIONER BALCH: Uh-huh.

20 COMMISSIONER MARTIN: Is this out of the
21 old rule? Has that been changed?

22 MR. BRANCARD: This is largely from the old
23 rule. This was -- this is almost exactly from the old
24 rule, but I think what's new is B.

25 COMMISSIONER MARTIN: Oh, that's right.

1 CHAIRWOMAN RILEY: Well, and A specifically
2 refers to Form C-141.

3 COMMISSIONER MARTIN: Right.

4 CHAIRWOMAN RILEY: The old form doesn't.

5 MR. BRANCARD: So these are some of the
6 first comments we have during the hearing, or suggested
7 changes. OGAP requested after "NORM," to write "or
8 TENORM." And we had testimony in response to that.

9 The Environmental Defense Fund and other
10 NGOs requested that the notification go to the Division
11 and landowner, and Mr. Price testified that he didn't
12 think that notifying other agencies was a good idea.

13 COMMISSIONER BALCH: I think he actually
14 said it was a "slippery slope," is what I have.

15 COMMISSIONER MARTIN: That is what he said.

16 COMMISSIONER BALCH: I have his notes right
17 here.

18 Other testimony from the presenting parties
19 questioned whether we had the authority to notify those
20 other parties.

21 MR. BRANCARD: We have a number of other
22 rules where we do that, require land management --
23 notice to land management.

24 COMMISSIONER MARTIN: Right.

25 COMMISSIONER BALCH: Or from the land

1 office point of view?

2 COMMISSIONER MARTIN: I like it from the
3 land office point of view. I like it just in a general
4 sense as well.

5 COMMISSIONER BALCH: You like the way it's
6 written?

7 COMMISSIONER MARTIN: Yeah.

8 COMMISSIONER BALCH: You don't feel like
9 you need a special notification?

10 COMMISSIONER MARTIN: No. The C-141 is
11 fine.

12 COMMISSIONER BALCH: Okay. And you might
13 get that C-141 much later on.

14 COMMISSIONER MARTIN: And that's okay.

15 COMMISSIONER BALCH: Could be three months,
16 six months later. Might even be -- because of the
17 90-day, there's the possibility of being done with
18 remediation before you even turn in the closure report.

19 COMMISSIONER MARTIN: Possible.

20 COMMISSIONER BALCH: You might not get it
21 until it's over.

22 COMMISSIONER MARTIN: Possible.

23 COMMISSIONER BALCH: Okay. As long as
24 you're comfortable with it. I think that's the primary
25 agency that would be potentially impacted, besides the

1 BLM, and they're probably going to have a separate
2 option in their -- in their agreement anyway, if they
3 want.

4 MR. BRANCARD: Their lease -- I mean, their
5 leases with other parties can determine their --

6 COMMISSIONER BALCH: I think that was the
7 argument made by the parties. If the party is
8 interested in those things, they will have it in their
9 agreement. And if it's major, we'll find out about it
10 on the 6:00 news.

11 MR. BRANCARD: And just a word on "NORM"
12 here. With A, NORM is -- NORM is a defined term in our
13 rules. Okay? TENORM is not. But "NORM" is the term of
14 art that regulatory agencies use. In fact, our
15 definition basically re-uses the Environment
16 Department's definition of "radiation control." And
17 then you have a rule under Rule 35 where you deal with
18 how NORM is to be handled and disposed of.

19 COMMISSIONER MARTIN: Right.

20 MR. BRANCARD: So NORM is dealt with
21 extensively both under the Commission's rules and under
22 the Environment Department's rules.

23 COMMISSIONER MARTIN: Right.

24 CHAIRWOMAN RILEY: I felt like we had
25 testimony yesterday that would cover that and identified

1 it wasn't necessary to include TENORM.

2 COMMISSIONER BALCH: So for EDF's
3 statement, under old numbering, 19.15.29.8, "Release
4 Notification," I think I would not be comfortable with
5 adding "landowner."

6 COMMISSIONER MARTIN: Nor would I.

7 CHAIRWOMAN RILEY: Nor would I. I'll say
8 it out loud.

9 COMMISSIONER BALCH: And I think that the
10 use of TENORM -- NORMs and TENORMs is a little bit
11 redundant. NORMs are naturally occurring radioactive
12 materials. That includes --

13 COMMISSIONER MARTIN: That includes all
14 TENORMs, I would say.

15 COMMISSIONER BALCH: Yeah. They're
16 concerned -- this is OGAP. They're concerned about a
17 gap in reporting. I'm not sure that would be --

18 MR. BRANCARD: Yeah. There is no evidence
19 that such a thing exists.

20 COMMISSIONER BALCH: Okay. We also had
21 testimony from -- not testimony -- public comment
22 from -- I'm not sure if I missed one. Okay. The main
23 part of the testimony I got from Mr. Powell -- Irvin
24 Boyd was that we need to make sure of remediation,
25 relevel the soil. He didn't say anything about

1 landowners reporting, but he certainly felt it impacted
2 in that case.

3 COMMISSIONER MARTIN: Erosion control,
4 basically.

5 COMMISSIONER BALCH: Erosion control,
6 doesn't want ponding and things to occur that would
7 concentrate and create vectors for water impact. So I
8 think that covers the comments on that part of the rule
9 from the other parties.

10 MR. BRANCARD: Right. And those comments
11 of Mr. Boyd are covered in Section 13 --

12 COMMISSIONER BALCH: Right.

13 MR. BRANCARD: -- which is the surface
14 restoration.

15 COMMISSIONER MARTIN: Restoration.

16 COMMISSIONER BALCH: I wanted to make sure
17 I didn't find anything else on that.

18 But OGAP and EDF and Mr. Price all had
19 comments on that, which I think we've addressed.

20 COMMISSIONER MARTIN: I think so, too.

21 CHAIRWOMAN RILEY: 10, "Release
22 Notification Reporting Requirements." We had a
23 comment -- that would have been from Wayne Price --
24 about having to notify the Environmental Bureau chief,
25 plus the Division district office. Did I understand him

1 correctly of not having to do both?

2 COMMISSIONER MARTIN: I didn't hear that
3 part.

4 COMMISSIONER BALCH: I think it kind of
5 falls under the broad -- broad comments on reporting in
6 general, more that other agencies are responsible for
7 their own rules. I'm paraphrasing from my notes.

8 MR. BRANCARD: Yeah. The current rule had
9 this sort of -- this bifurcation where verbal
10 notification goes to the district office in 24 hours,
11 but then if the release "may with reasonable probability
12 be detrimental to water," then you're also supposed to
13 notify the Environmental Bureau chief. So this just
14 makes it both for a major --

15 CHAIRWOMAN RILEY: Yeah. I'm okay with (1)
16 for sure.

17 COMMISSIONER MARTIN: I am, too.
18 And I like (2).

19 MR. BRANCARD: I mean (2) and B, again, are
20 largely taken from the current rule.

21 CHAIRWOMAN RILEY: I'm good with B.

22 COMMISSIONER MARTIN: I am, too.

23 COMMISSIONER BALCH: Yup. I'm good.

24 CHAIRWOMAN RILEY: That takes us to 11,
25 "Site Assessment and Characterization." And we have

1 "recoverable products" listed again. So changing
2 "products" to "materials" would make sense to me.

3 COMMISSIONER BALCH: I would agree.

4 This has been kind of referred to as the
5 spill rule. It has to do with liquid spills, so I
6 assume there is another part of the statute that deals
7 with a tipped-over truck of dry chemicals, things like
8 that?

9 MR. BRANCARD: This is your release rule.

10 COMMISSIONER BALCH: I'm just curious. In
11 the beginning of 19.15.29.11, at the end of the
12 sentence, they say, "Release containing liquids." So it
13 specifically refers to that.

14 MR. BRANCARD: Right. So the work on
15 delineation on spill is focused on spills that involve
16 liquids. All the other spills would follow Section 8,
17 which tells you to recover stuff and to begin
18 remediation.

19 COMMISSIONER BALCH: Right.

20 MR. BRANCARD: But you don't have to do a
21 whole delineation of a truckload.

22 COMMISSIONER BALCH: It's all those
23 recoverable materials. So if you have a tipped-over
24 dump truck that's filled with dried pit waste, you don't
25 want to leave it laying there.

1 MR. BRANCARD: No. You've got to deal with
2 it immediately under Section 8, unless there are liquids
3 that are now --

4 COMMISSIONER BALCH: And then a big
5 rainstorm occurred after it fell over.

6 MR. BRANCARD: I think the Division would
7 have the discretion to turn that into a liquid
8 situation, if it becomes a liquid situation.

9 COMMISSIONER BALCH: Okay. Right. Falls
10 over in a playa and the playa fills with water. What
11 could happen, right? So it's covered. Okay.

12 MR. BRANCARD: And you have -- you know,
13 you have Rule 35 which also deals with solid wastes and
14 disposal, so that covers a lot of nonliquid scenarios.

15 COMMISSIONER BALCH: In A, the word
16 "site" -- nope. We already changed it to "release."

17 MR. BRANCARD: Yes.

18 COMMISSIONER BALCH: I have a little bit of
19 a hard time processing how you would measure the
20 distance to the nearest significant watercourse, in
21 (4) -- A(4). I see the language change fixed that.
22 Sorry. My notes are on NMOGA Exhibit D. I think it's
23 been fixed already.

24 MR. BRANCARD: That was discussed. And I'm
25 not sure. Is that what the Commission wanted to

1 replace, "horizontal extents" with "boundary"?

2 COMMISSIONER MARTIN: We talked about
3 replacing the "extent" with "boundary."

4 COMMISSIONER BALCH: So the only other
5 change that I would propose there would be to remove the
6 words "of the boundary" and replace it with "of the
7 boundary of the release."

8 CHAIRWOMAN RILEY: Read the whole thing.

9 COMMISSIONER BALCH: "The responsible party
10 must determine the horizontal distance to the nearest
11 significant watercourse as defined in Subsection P of
12 19.15.17.7 NMAC within a half mile of the boundary of
13 the release."

14 COMMISSIONER MARTIN: Okay.

15 COMMISSIONER BALCH: I have bunch of
16 pictures in my notes about strange ways you could end up
17 with a problem trying to use "of the boundary." And the
18 way it was discussed in testimony, I thought
19 particularly from the OCD, I didn't really like because
20 it was from the release point and the end point of the
21 release. So the highest point up and the lowest point
22 downhill. But there could be a meandering path. There
23 could be a broad plume, and you could interpret that
24 to -- to -- you could actually end up actually not doing
25 the --

1 COMMISSIONER MARTIN: I didn't get that out
2 of the testimony, but -- and I personally like
3 "horizontal extent," but "boundary" is just as good, or
4 "any boundary."

5 COMMISSIONER BALCH: I don't like "any
6 boundary." I would say "horizontal boundary." I
7 wouldn't say "any boundary."

8 COMMISSIONER MARTIN: "The extent of that
9 boundary." Gotcha. Yeah, I'm okay with that. I think
10 that's what they meant -- what the Division meant.

11 MR. BRANCARD: What's the language?

12 COMMISSIONER BALCH: I think "any
13 horizontal boundary of the release" would be the last
14 part of that sentence, "any horizontal boundary of the
15 release."

16 MR. BRANCARD: Does that work for everyone?

17 COMMISSIONER MARTIN: Yeah.

18 CHAIRWOMAN RILEY: Leave "horizontal" in?

19 COMMISSIONER BALCH: And replace "extent"
20 and with "boundary."

21 MR. BRANCARD: Okay.

22 CHAIRWOMAN RILEY: Okay.

23 COMMISSIONER BALCH: Looks like the next
24 place we had in discussion was in "Soil/Waste
25 Characteristics," (5)(b). There was some discussion

1 about the use of the word "may" -- "the operator may use
2 the following soil sampling methods" -- versus "shall."
3 And I think at that point of the page, it's pretty clear
4 that the Division wants them to use these methods or
5 another Division-approved method, and I think that NMOGA
6 and IPANM preferred the use of the word "may."

7 CHAIRWOMAN RILEY: I don't know that they
8 landed on what they wanted. Remember they said they
9 were neutral or did --

10 COMMISSIONER MARTIN: They ended up liking
11 "may" better. At first, they were neutral.

12 COMMISSIONER BALCH: They were neutral, and
13 then they switched it up. And I can understand that
14 point of view because of the operational flexibility,
15 best practices, things like that. But bullet five is
16 "or other division-approved methods."

17 COMMISSIONER MARTIN: Right.

18 COMMISSIONER BALCH: The only thing that --
19 I think the difference between using the word "may" or
20 "shall" -- or I think Mr. Brancard noted they don't use
21 the word "shall." They use the word "must." Same thing
22 has that -- well, if you use the word "may," they could
23 choose not to use any of these methods, including "other
24 division-approved methods." Of course, they won't get
25 their permit.

1 COMMISSIONER MARTIN: Right. I mean, I
2 guess that's the point, but I see what you're saying.

3 CHAIRWOMAN RILEY: Uh-huh. Well, it saves
4 everybody time if you know what criteria you have to use
5 than if you come back later and submit your report and
6 it wasn't acceptable. That just creates problems for
7 everyone.

8 COMMISSIONER MARTIN: So you prefer "must"?

9 CHAIRWOMAN RILEY: Uh-huh. If they have a
10 different method, they can always request it.

11 COMMISSIONER BALCH: That would be a
12 variance, or they can ask the Division. A variance --

13 COMMISSIONER MARTIN: It wouldn't be a
14 variance because --

15 MR. BRANCARD: Yeah.

16 COMMISSIONER BALCH: Okay. But if they
17 don't want to use (i) through (iii) or (iv), then they
18 have to ask --

19 COMMISSIONER MARTIN: Right.

20 COMMISSIONER BALCH: -- not just do it.

21 CHAIRWOMAN RILEY: Uh-huh.

22 COMMISSIONER BALCH: So I think "must" or
23 "shall" would be the better language.

24 MR. BRANCARD: Then I would say "shall use
25 one of the following." You're not telling them to use

1 all five.

2 CHAIRWOMAN RILEY: (B)?

3 COMMISSIONER BALCH: Sure.

4 MR. BRANCARD: There was also -- on this
5 particular little paragraph here, there was a comment by
6 OGAP about lack of liner integrity, but as I understand
7 it, they're referring to the fact that lack of liner
8 integrity meant that --

9 CHAIRWOMAN RILEY: That was a disposal
10 issue.

11 MR. BRANCARD: -- disposal of the liner
12 would be covered under RCRA rules, but this has nothing
13 to do with disposal.

14 COMMISSIONER MARTIN: That's the way I took
15 it also.

16 COMMISSIONER BALCH: Yeah.

17 CHAIRWOMAN RILEY: I think (c) is okay. We
18 received a lot of testimony on that.

19 COMMISSIONER BALCH: Yeah. During Rule 17,
20 that table was probably about two weeks of time.

21 CHAIRWOMAN RILEY: See how much time you
22 saved us for this one?

23 COMMISSIONER BALCH: Where does -- in (e),
24 I have a note that RCRA would be the applicable policy.

25 MR. BRANCARD: So (e)(i), what they're

1 referring to, that section of the federal regulations,
2 those are -- these are RCRA regulations.

3 COMMISSIONER BALCH: Okay.

4 MR. BRANCARD: So in other words, if it's
5 hazardous waste -- it falls into a list of hazardous
6 waste, you've got to treat it. Even though it's exempt
7 because it's at an oilfield, you still have to use the
8 RCRA treatment methods.

9 COMMISSIONER BALCH: Brown [sic] field does
10 not apply or the -- so I think the intent of (c) -- when
11 I originally read (c), I was a little bit concerned
12 about the reporting timelines -- I'm sorry -- not the
13 reporting timelines, but the request timelines and
14 response timelines because a release could be sitting
15 there doing nothing. But I think the changes to
16 "Remediation," particularly the part where "the
17 responsible party must remediate all releases regardless
18 of" -- let's see -- "and must immediately" -- no.
19 Sorry.

20 MR. BRANCARD: You jumped ahead, Bob.

21 COMMISSIONER BALCH: I did jump ahead. I
22 was jumping ahead on purpose because I thought it was
23 related. But really my concern there is you end up with
24 a pause in remediation, right?

25 MR. BRANCARD: Uh-huh.

1 COMMISSIONER BALCH: And it could be 74
2 days, if you add all the things together.

3 COMMISSIONER MARTIN: That doesn't mean no
4 action will be taken in 74 days.

5 COMMISSIONER BALCH: Well, but I think the
6 change to 8 that was made --

7 CHAIRWOMAN RILEY: 8B.

8 COMMISSIONER BALCH: I'm just wondering if
9 we need to have something in there that makes it clear
10 that remediation efforts aren't necessarily paused by
11 that set of actions.

12 COMMISSIONER MARTIN: Okay. I see that in
13 other parts of the rule that circumvent that, but if you
14 want to add it here, that is --

15 COMMISSIONER BALCH: Well, I mean, the way
16 it's set up now, you could -- you could complete your
17 remediation before you turn in the secretary/treasurer
18 report.

19 COMMISSIONER MARTIN: True.

20 COMMISSIONER BALCH: So a good operator is
21 going to be out there cleaning it up as soon as they can
22 because it only gets worse the longer you wait.

23 COMMISSIONER MARTIN: Right.

24 COMMISSIONER BALCH: But (c) -- (c) is if
25 there is a disconnect between the Division and the

1 responsible party.

2 COMMISSIONER MARTIN: If you want to add
3 something here that harkens back to the immediate
4 response or to change cleanup efforts, that's fine. I
5 think that's what's going to happen anyway.

6 COMMISSIONER BALCH: I think this was
7 actually discussed a little bit yesterday, talking about
8 the possibility. The responsible party has gone in
9 there. They've done their initial site cleanup.
10 They've built or started to work on a secularization
11 plan. They're doing the remediation, and they're
12 turning the whole thing in at the end to the Division.
13 And then the Division says, "Wait a second. We think
14 you should have done a little more to characterize the
15 extent of the plume."

16 COMMISSIONER MARTIN: That sometimes
17 happens.

18 COMMISSIONER BALCH: But they've already
19 backfilled, and the responsible party's put a bow on it.
20 I think that NMOGA's position on that was that that's
21 the operator's responsibility. It's the responsible
22 party's responsibility to close the site without --

23 COMMISSIONER MARTIN: At their own risk.

24 COMMISSIONER BALCH: My -- my only concern
25 here is that you don't have a case where somebody has

1 the spill or early release, they go through it in a
2 process. They did their initial cleanup, then they send
3 in their site characterization report.

4 COMMISSIONER MARTIN: Right.

5 COMMISSIONER BALCH: And the Division
6 doesn't agree with that, so the Division has 30 days to
7 tell them that. And from then, once the Division
8 notifies them, which could be 30, 40 days, they have 13
9 days to respond. And then if they -- so that's 44 days.

10 COMMISSIONER MARTIN: Right.

11 COMMISSIONER BALCH: If the responsible
12 party disagrees with that request, they may consult the
13 Division or file an application for a hearing within 30
14 days. And hearings can take a little while to schedule,
15 so it could be months. And I just want to ensure
16 that --

17 COMMISSIONER MARTIN: Efforts continue
18 during that period.

19 COMMISSIONER BALCH: -- remediation doesn't
20 stop.

21 COMMISSIONER MARTIN: I see.

22 MR. BRANCARD: But there -- this is -- I
23 tried to get this out yesterday in the testimony, but
24 there are two separate timelines for remediation. Okay?

25 COMMISSIONER BALCH: Uh-huh.

1 MR. BRANCARD: So under (11)(c) -- (11)(c)
2 is both the remediation plan and the characterization
3 report. Okay? And it's simply if the Division
4 determines that they haven't submitted the correct
5 information in that plan or report, they notify the
6 operator who then -- the responsible party then has 14
7 days to provide that information. Okay? But then when
8 you go further in here to 12C(5), which talks about the
9 remediation plan, which is part of the characterization
10 report, okay, then it says the Division has to approve,
11 approve with conditions or deny within 60 days. Okay?
12 So that's a second decision point on the remediation
13 plan. And that can be appealed, taken -- so there is 30
14 days of do you have all the right information, all the
15 right parts to the plan, and the 60-day, we approve,
16 deny, we're adding conditions.

17 COMMISSIONER BALCH: Yeah.

18 MR. BRANCARD: The 60-day only applies to
19 the remediation plan. The site characterization report,
20 there is no decision on there. But if the site
21 characterization report is missing required parts, the
22 agency will tell the responsible party that within 30
23 days.

24 COMMISSIONER BALCH: I think it was the
25 clear intention of all the parties that remediation

1 happens as quickly as possible.

2 MR. BRANCARD: (Indicating.)

3 COMMISSIONER BALCH: I just want to make
4 sure that's captured.

5 MR. BRANCARD: Well, it's the attention you
6 talked about between doing it and doing it right.

7 But clearly you don't have -- if you've
8 already, within the first 90 days, done the reclamation,
9 you don't need to submit the characterization report.
10 But you have to submit the final closure report, which
11 is going to have to have information about the site.

12 COMMISSIONER BALCH: It's probably going to
13 have the characterization report in it.

14 MR. BRANCARD: Yeah. I mean, it's going to
15 have to have some test results that you actually cleaned
16 up --

17 COMMISSIONER BALCH: Has to satisfy the
18 Division.

19 MR. BRANCARD: Yeah. I mean, if you want
20 to make that more explicit, you know, in 11A where it
21 says, you know, "submit the characterization report or
22 submit a final closure report," you can, if you want,
23 cross-reference where the closure requirements are at
24 that point. I mean, I think the "closure report" is
25 sort of a term that's used variously here. So --

1 COMMISSIONER MARTIN: I guess my point is
2 that in the vast majority of cases, it doesn't happen as
3 methodically and as slowly as you're describing. I
4 mean, a lot of this stuff is just done concurrently, in
5 reality.

6 COMMISSIONER BALCH: Sure.

7 COMMISSIONER MARTIN: Looking at specific
8 parts and saying that's slowing down the process, I'm
9 not sure that it really is.

10 COMMISSIONER BALCH: Well, I'm a little bit
11 sensitive to the fact that all parties have mentioned
12 that the Division is understaffed and overworked.

13 COMMISSIONER MARTIN: Right.

14 COMMISSIONER BALCH: It's probably not
15 likely to change.

16 COMMISSIONER MARTIN: Probably not. But
17 it's in the operator's best interest to act quickly and
18 efficiently all throughout this process.

19 COMMISSIONER BALCH: No. I agree that the
20 longer you wait, the worse it gets.

21 So there is already a pointer in 11A to the
22 closure report. Well, it's in accordance with 19.15.29.
23 So you could say the report is 19.15.29.13, right?

24 MR. BRANCARD: Well, it would be 12 --

25 COMMISSIONER BALCH: Or 12.

1 MR. BRANCARD: -- whatever, (d) or (e).

2 (E) is actually report.

3 COMMISSIONER BALCH: I would not be
4 uncomfortable with adding that explicit link in 11A just
5 to make it clear.

6 COMMISSIONER MARTIN: What's the language
7 going to be?

8 COMMISSIONER BALCH: Just adding a pointer
9 to where the closure requirements are.

10 COMMISSIONER MARTIN: And where are you
11 going to put that?

12 COMMISSIONER BALCH: 11A.

13 CHAIRWOMAN RILEY: Instead of 19.15.29,
14 we're going to have 19.15.29.12.

15 COMMISSIONER BALCH: 12 and whatever.

16 MR. BRANCARD: (E) is the -- (e) refers to
17 what the closure report is and what's contained in it.

18 COMMISSIONER MARTIN: So what's it going to
19 say? What's the language going to be?

20 MR. BRANCARD: So it would be "or
21 characterize the release by submitting a final closure
22 report within 90 days of the discovery of the release in
23 accordance with." Instead of just 19.15.29, it would be
24 Subsection (e) of 19.15.29.12.

25 COMMISSIONER BALCH: Basically where the

1 closure requirements are, just an explicit pointer. It
2 doesn't change anything.

3 COMMISSIONER MARTIN: With the goal being
4 that work continues throughout the process?

5 COMMISSIONER BALCH: Uh-huh.

6 MR. BRANCARD: Uh-huh.

7 COMMISSIONER MARTIN: Okay.

8 CHAIRWOMAN RILEY: "Remediation and
9 Closure."

10 MR. BRANCARD: Okay.

11 COMMISSIONER BALCH: Let us know if you
12 need a break.

13 (The court reporter requests a break.)

14 COMMISSIONER BALCH: How about a quick
15 break?

16 MR. BRANCARD: Are we done with Section 11?

17 COMMISSIONER BALCH: I think we are until
18 we come back to it.

19 CHAIRWOMAN RILEY: Off the record. Be back
20 here in ten minutes.

21 (Recess, 10:33 a.m. to 10:45 a.m.)

22 CHAIRWOMAN RILEY: We are back on the
23 record. We are on 29.12.

24 COMMISSIONER BALCH: There was some concern
25 from Wayne Price about the 90 days being too

1 prescriptive and basically turning it into a
2 dig-and-haul rule. We weren't discussing that, I guess,
3 because the real focus of this does seem to be on
4 getting it done quick, which is good, but maybe not
5 necessarily always the best way to remediate a problem.

6 CHAIRWOMAN RILEY: It does say, "The
7 responsible party may request an extension of time to
8 remediate upon a showing of good cause."

9 COMMISSIONER BALCH: Right.

10 CHAIRWOMAN RILEY: Showing that -- would
11 not be going to dig and haul and needed in situ. That
12 would be a great time to --

13 COMMISSIONER MARTIN: The rule requires
14 them to take some immediate action, maybe not complete
15 remediation, before you at least begin to eliminate the
16 source, clean up the free liquids. All that needs to be
17 done.

18 COMMISSIONER BALCH: Make sure you're not
19 endangering water.

20 COMMISSIONER MARTIN: You have to dig and
21 haul that stuff. Then you have to dig and haul, but it
22 alleviates the long-term detriments using some -- if you
23 want to.

24 COMMISSIONER BALCH: Well, I just want to
25 make sure that the rule addresses that concern, because

1 I think -- I think it's important to allow best
2 practices.

3 COMMISSIONER MARTIN: Right.

4 COMMISSIONER BALCH: And \$80 a yard?

5 COMMISSIONER MARTIN: Uh-huh.

6 COMMISSIONER BALCH: And I think there are
7 a limited number of these surface-based facilities that
8 are available, and it's hard to get a permit for a new
9 one. In fact, the last one we tried to permit is now
10 being sued by how many different directions? Three
11 different directions?

12 So yeah, anything that comes with best
13 practices, minimizes having to haul away things, do
14 on-site, would be great, but some of those things do
15 take time.

16 COMMISSIONER MARTIN: Yeah.

17 COMMISSIONER BALCH: Spread out dirt and
18 put microbes on it, things like that.

19 CHAIRWOMAN RILEY: Uh-huh. But there is a
20 way for them to do that.

21 COMMISSIONER MARTIN: But the idea is to
22 remove the head and remove the --

23 COMMISSIONER BALCH: Right.

24 COMMISSIONER MARTIN: And that's the main
25 goal, to dispose of that. They have to dispose of that,

1 and I think it still does --

2 COMMISSIONER BALCH: So do you think
3 Mr. Price's concern is unwarranted?

4 COMMISSIONER MARTIN: Do you want to add
5 something to A?

6 COMMISSIONER BALCH: Well, I don't know. I
7 think his main concern was just that he felt the 90 days
8 was making it so that he could really only dig and haul.
9 Now, of course, it's just not just 90 days. You can get
10 an exception or a variance or another adjustment to it.
11 There is an extension of time right there in the same
12 sentence.

13 COMMISSIONER MARTIN: I don't think the
14 reality of the situation would dictate a change. I
15 think what you're describing has happened anyway, so I'm
16 not sure we need to change -- I think the rule as it is
17 kind of covers it, but if you've got something --

18 COMMISSIONER BALCH: I just want to make
19 sure we address Mr. Price's concern. I did share that
20 concern, but really we can't dictate best practice.

21 CHAIRWOMAN RILEY: Uh-uh.

22 COMMISSIONER BALCH: We just want to make
23 sure that whatever rule we put forth allows for best
24 practice.

25 COMMISSIONER MARTIN: I think we asked the

1 division or somebody whether they characterize this rule
2 as a dig-and-haul rule, and they did not. So --

3 CHAIRWOMAN RILEY: We did.

4 COMMISSIONER MARTIN: I don't. I don't see
5 it that way. I don't think that it is.

6 CHAIRWOMAN RILEY: I'm comfortable with
7 this just because of the sentence that says that they
8 can ask for an extension, and that's where they would --
9 that's where they would be able to do that. So I don't
10 know what you would even add to this for language.

11 COMMISSIONER BALCH: Yeah. I think the
12 other examples that Mr. Price brought up was blending,
13 and I did specifically ask that question of -- I think
14 it was Mr. Powell. Maybe it wasn't Mr. Powell.

15 CHAIRWOMAN RILEY: I think you did.

16 COMMISSIONER MARTIN: It was.

17 COMMISSIONER BALCH: However, the
18 responsible party didn't encourage that.

19 CHAIRWOMAN RILEY: Correct.

20 COMMISSIONER BALCH: So even though it's
21 allowed by Rule 17 and I think kind of by default in 34
22 and in theory, it would be allowed by this. It's not
23 going to be a division-approved method most likely.

24 COMMISSIONER MARTIN: Well, it depends on
25 where you are. In the northwest perhaps, but the

1 southeast may be a different story. I don't know. But
2 I don't have a lot of concerns about blending.

3 COMMISSIONER BALCH: Sure. Best practice
4 is going to be -- well, if we feel like there's enough
5 protection there, then I'm good with it.

6 COMMISSIONER MARTIN: Okay.

7 COMMISSIONER BALCH: Or enough ability to
8 have a -- really what I'm -- what I'm trying to balance
9 here is the desire to quickly remediate problems --

10 COMMISSIONER MARTIN: Right.

11 COMMISSIONER BALCH: -- and then remediate
12 them in perhaps the best way possible.

13 COMMISSIONER MARTIN: Uh-huh.

14 COMMISSIONER BALCH: So in C.(1)(e), part
15 of the remediation plan requirements are that you have a
16 proposed timeline for remediation activities, right?

17 COMMISSIONER MARTIN: Uh-huh.

18 CHAIRWOMAN RILEY: Uh-huh.

19 COMMISSIONER BALCH: Which could be greater
20 than 90 days. Do we want to have a statement in B --

21

22 CHAIRWOMAN RILEY: Yeah, but you're --

23 COMMISSIONER MARTIN: You're constrained by
24 the other perhaps, but if you want to refer back to
25 that --

1 CHAIRWOMAN RILEY: I wonder why B is before
2 C, because you have to -- you have to fill in -- or
3 submit your remediation plan, and then after that
4 approved plan, you have the 90 days to complete it. So
5 if you were reading this, it would read better if you
6 learned about what your plan -- what goes in your plan,
7 when it's required to be turned in and then what happens
8 next, would be more sequential, unless I'm missing
9 something.

10 What do you think, Mr. Brancard?

11 MR. BRANCARD: I don't know whether B is
12 sort of like A, a more general statement upfront. But
13 you're right. It could be -- B could be included in D,
14 which is closure requirements.

15 COMMISSIONER BALCH: Yeah. That actually
16 probably ought to be.

17 MR. BRANCARD: Yeah. I mean, the only
18 thing that's important in B is, sort of, this is the
19 only real reference in 29 that tells you when you might
20 have to go to 30. Okay? So the Commission already has
21 a detailed rule about abatement plans under Rule 30,
22 which sort of follows abatement plans under the Water
23 Quality Control Commission regulations, which are
24 designed for dealing more with groundwater
25 contamination.

1 COMMISSIONER MARTIN: I like having it
2 upfront myself.

3 MR. BRANCARD: Yeah.

4 COMMISSIONER BALCH: You know, this 90
5 days, I keep coming back to it, and I wonder what
6 purpose it serves. What it really ought to say is
7 something along the lines of "within the
8 division-approved timeline of the remediation plan or."

9 COMMISSIONER MARTIN: Say that again.

10 COMMISSIONER BALCH: Well, if you like
11 C.(1)(e), you're supposed to propose a time for
12 remediation activities.

13 COMMISSIONER MARTIN: Uh-huh.

14 COMMISSIONER BALCH: And B says you have to
15 do it within 90 days. So I'm saying instead of the 90
16 days, say "within the timeline approved by the division
17 for remediation activities."

18 COMMISSIONER MARTIN: Well, now, reading
19 the two together, a proposed timeline cannot exceed 90
20 days.

21 COMMISSIONER BALCH: Well, right, which I
22 think is not a good thing.

23 COMMISSIONER MARTIN: You do?

24 COMMISSIONER BALCH: You may propose
25 something that takes 95 days or 120 days or three years.

1 COMMISSIONER MARTIN: Then you have to come
2 and propose that to the division.

3 COMMISSIONER BALCH: But you are proposing
4 it in your remediation plan.

5 COMMISSIONER MARTIN: But it has to be
6 approved.

7 COMMISSIONER BALCH: Right. So if it's
8 approved by the division, then it would happen within
9 the 90 days, which is the requirement. So I'm saying
10 why have 90 days when you can have "within the timeline
11 approved by the division" for your remediation plan?

12 Now, a second case done here is that you're
13 done with everything within 90 days. That's what that
14 is trying to capture, but that may have to be separated
15 out.

16 COMMISSIONER MARTIN: I think it's trying
17 to capture that we don't want anything to extend past 90
18 days unless there is some extenuating circumstance
19 presented to the Division.

20 CHAIRWOMAN RILEY: So we could fix it in
21 either B or in E by saying, you know, "proposed timeline
22 for remediation activities if" -- "if it's going to
23 exceed 90 days." Or up in B, it could say "within 90
24 days or timeline approved within the remediation plan."

25 COMMISSIONER BALCH: "In the 90 days or the

1 timeline approved by Division in the remediation plan."

2 COMMISSIONER MARTIN: A timeline includes a
3 lot of different steps. I think what they want to see
4 is a timeline in each of those steps that's going to be
5 completed, whether it's 90 days or 120 days.

6 COMMISSIONER BALCH: It's pretty clearly.
7 It's says, "We've approved this remediation plan, and
8 you have 90 days."

9 CHAIRWOMAN RILEY: So are you saying within
10 that timeline and that 90 days, they're going to say,
11 "On day one, we're doing this, and on day two, we're
12 doing this"?

13 COMMISSIONER MARTIN: Yeah. By day 15,
14 this will be done; by day 30, this will be done. That's
15 what I consider a timeline.

16 COMMISSIONER BALCH: I agree, too. So
17 going back to best practices or, as I mentioned earlier,
18 the concept of getting it done right, not fast, I'm
19 wondering if -- now I'm wondering if I don't agree with
20 Mr. Price and the 90 days being too prescriptive.

21 Now, there is a case in this rule where the
22 operator can do everything, be all done, submit a
23 closure plan within 90 days, and that's it. It's all
24 over. You don't have to worry about it anymore. And I
25 think that's great because it encourages a quick

1 resolution, specifically for the smaller spills, 15-,
2 20-, 50-, maybe 100-barrel spills. But I think that B
3 is in direct conflict with (1)(e).

4 (1)(e) says provide a timeline, and B says
5 regardless of the timeline, it has to be done within 90
6 days.

7 CHAIRWOMAN RILEY: I don't think it's a
8 conflict.

9 COMMISSIONER BALCH: Well, it tells you the
10 timeline should not be more than 90 days.

11 COMMISSIONER MARTIN: I don't see the
12 conflict exactly. I'm against removing it because it
13 was something the Division agreed upon in the committee
14 meetings. They must have had some idea that 90 days is
15 a long enough length of time to get most remediations
16 done.

17 COMMISSIONER BALCH: What about modifying
18 it, saying "within 90 days of Division approval or
19 within the timeline approved in the remediation plan"?

20 COMMISSIONER MARTIN: Okay. Sure.

21 COMMISSIONER BALCH: And then we have to
22 consider whether we want to move B to D. I don't know
23 how these things are supposed to be laid out.

24 MR. BRANCARD: Oh, that's your choice.

25 COMMISSIONER BALCH: So the language might

1 be "written 90 days of Division approval or within the
2 timeline approved for remediation activities" --
3 something to do with the remediation plan, or "with the
4 Division approval of a timeline of the remediation
5 plan."

6 COMMISSIONER MARTIN: Okay.

7 COMMISSIONER BALCH: Can you figure out a
8 lawyerly way to say that?

9 MR. BRANCARD: Yeah. I mean, the basic
10 point of B is not -- I mean, the 90 days is important,
11 but the 90 days doesn't need to be in B. Okay? It
12 seems the point of B is sort of if you have a release,
13 you either have to reclaim it under the procedures under
14 this rule or under the abatement plans process in the
15 next rule, Rule 30. That seems to be the main point of
16 B. The 90-day requirement, you can sort of put in
17 anywhere.

18 CHAIRWOMAN RILEY: Isn't there then closure
19 requirements, too? We cover it again in D.

20 COMMISSIONER BALCH: I mean, so --

21 CHAIRWOMAN RILEY: It's not a different 90
22 days, right?

23 COMMISSIONER BALCH: If you do everything
24 within 90 days, you only have to submit a closure.

25 CHAIRWOMAN RILEY: Well, this 90 days is

1 about the work.

2 COMMISSIONER BALCH: Yes. But -- so if you
3 go to (1)(e) and you come up with a timeline in
4 remediation activities, what if it's seven days? Then
5 you still have 90 days to complete it. If it's 91 days,
6 then you have to ask for a variance. So I think the
7 timeline -- an improved timeline is the important part.

8 COMMISSIONER MARTIN: In reality, I don't
9 think it would work that way. You've got people and
10 equipment out there who can remediate a site -- they
11 could probably move it out in seven days and remove it
12 and have a remaining 83 days.

13 COMMISSIONER BALCH: I don't think anybody
14 schedules it for four weeks from now even though it's
15 cheaper than getting it on an emergency basis tomorrow.

16 COMMISSIONER MARTIN: Okay. So what did
17 you want to do? What did you want to add?

18 COMMISSIONER BALCH: Well, I think I'm kind
19 of with Bill. I would take the 90 days and put that
20 elsewhere in the Remediation and Closure, where we can
21 specify -- I think the intent of B is not to put that
22 timeline. The intent of B is to -- is that you're going
23 to do it with a remediation plan or an abatement plan.

24 COMMISSIONER MARTIN: So where do you want
25 to put it?

1 MR. BRANCARD: So how about if we try to
2 capture both of these concepts and sort of say that "the
3 responsible party must complete remediation under this
4 section as soon as practicable. Any remediation that
5 exceeds 90 days after approval of the remediation plan
6 must be proposed within the remediation plan and
7 approved by the Division."

8 COMMISSIONER BALCH: We'll set a timeline
9 approved by the Division in their remediation plan.

10 COMMISSIONER MARTIN: Okay. I'm good with
11 that.

12 COMMISSIONER BALCH: That would work?

13 COMMISSIONER MARTIN: That makes sense.

14 MR. BRANCARD: Now, where do you want to
15 put that?

16 CHAIRWOMAN RILEY: Can we take out the time
17 frame out of this paragraph but keep the rest of it as
18 far as referring back to 30?

19 COMMISSIONER MARTIN: Take out of B?

20 CHAIRWOMAN RILEY: Take out of B.

21 COMMISSIONER MARTIN: And put it where? I
22 don't know. I kind of like having it upfront.

23 COMMISSIONER BALCH: I'm a little bit with
24 you on that. I kind of like what the expectation is
25 right at the beginning.

1 CHAIRWOMAN RILEY: Right.

2 COMMISSIONER BALCH: Why don't we change
3 the language, and then see what it looks like where it
4 is?

5 COMMISSIONER MARTIN: Adding whatever
6 language you want to in B and leave the 90 days there.

7 COMMISSIONER BALCH: I think we want to see
8 what it looks like in B first.

9 MR. BRANCARD: I mean, the tricky thing
10 with doing remediation under 19.15.29 is your flowchart,
11 right, because we're sort of allowing people to move
12 quickly on remediation without a remediation plan, if
13 they can do it quickly.

14 COMMISSIONER MARTIN: Uh-huh.

15 MR. BRANCARD: And then -- but, obviously,
16 things that are sort of more significant need to go
17 through a remediation plan and done -- the whole
18 characterization and remediation plan process.

19 COMMISSIONER MARTIN: Uh-huh.

20 COMMISSIONER BALCH: I think it's going to
21 largely apply to major releases by however you get to a
22 major release. Minor releases, I think, are things that
23 you can just take care of. Maybe that's the intent.
24 I'm not sure.

25 COMMISSIONER MARTIN: I think that's what

1 happens in the field, actually.

2 COMMISSIONER BALCH: Yeah. Well, that
3 would be my thought. So anything that you can dig out
4 and haul away with a few dump trucks, you're probably
5 going to do, and submit the closure plan -- or the
6 closure report. And the Division, by the same token, is
7 going to be more interested in things that are more
8 likely to have a broad impact, impacting groundwater or
9 caused by a fire.

10 COMMISSIONER MARTIN: I gotcha.

11 COMMISSIONER BALCH: And that's where
12 they're going to want, perhaps, a more detailed plan.

13 MR. BRANCARD: So 11A indicates that unless
14 you have filed a final closure report within 90 days of
15 the discovery of the release, in other words, you've
16 done the remediation and submitted a closure report in
17 90 days, then you have to submit a site characterization
18 plan or remediation.

19 COMMISSIONER MARTIN: I agree that that's
20 what that says.

21 MR. BRANCARD: So we could say "unless
22 remediation is completed within 90 days of discovery,
23 the responsible party must complete the remediation
24 either under a division-approved remediation plan or
25 under abatement plan under 30."

1 COMMISSIONER BALCH: I think the 90 days is
2 covered in 11.

3 COMMISSIONER MARTIN: I like your language,
4 "as soon as practicable," also.

5 MR. BRANCARD: Right. Because that's --
6 that's -- because then you need a deadline for
7 completing remediation under the remediation plan.

8 COMMISSIONER MARTIN: So that will come
9 from the timeline accepted by the Division in the
10 remediation plan.

11 MR. BRANCARD: Right. So that's the --
12 that's the other sentences I was dealing with. That's
13 just the remediation and the remediation plan.

14 But the goal of B -- the primary goal seems
15 to be telling people, "Okay. We're either going under a
16 remediation plan under 29 or under an abatement plan
17 under 30."

18 COMMISSIONER MARTIN: I think that's the
19 idea.

20 COMMISSIONER BALCH: Yeah. So I think that
21 with the addition of the "as quickly as" --

22 MR. BRANCARD: And separately write that
23 sentence about the deadline.

24 COMMISSIONER BALCH: Yeah. Do you want
25 that to be a new C, or do you think we should move that

1 to D?

2 MR. BRANCARD: It could either be a B1 and
3 2, or we can move the second part into closure
4 requirements.

5 COMMISSIONER BALCH: How about B(1) and (2)
6 and see what it looks like?

7 Would you like to have that -- expectations
8 front-loaded in the section?

9 CHAIRWOMAN RILEY: Okay.

10 COMMISSIONER MARTIN: Uh-huh.

11 CHAIRWOMAN RILEY: Are we ready to move on?

12 COMMISSIONER BALCH: Yeah. Do you have the
13 proposed language?

14 MR. BRANCARD: All right. So the first
15 part would simply revise -- would eliminate the 90 days
16 from B -- this part of B and state that "unless
17 remediation is completed within 90 days of discovery of
18 the release, the responsible party must complete
19 division-approved remediation for releases under either
20 a remediation plan pursuant to this section or under an
21 abatement plan submitted to the Division in accordance
22 with 19.15.30." Okay? And the rest of that paragraph
23 follows.

24 COMMISSIONER MARTIN: Where does the 90
25 days end up?

1 MR. BRANCARD: Okay. So the 90 days goes
2 into Section (2), which says, "Any remediation under
3 19.15.29 must be completed as soon as practicable. Any
4 remediation that exceeds 90 days after approval of a
5 remediation plan must be proposed within in a
6 remediation plan and approved by the Division."

7 COMMISSIONER MARTIN: Okay.

8 COMMISSIONER BALCH: I like that.

9 CHAIRWOMAN RILEY: Sounds good.

10 COMMISSIONER BALCH: That's great.

11 CHAIRWOMAN RILEY: Are we ready for
12 "Remediation Plan Requirements"?

13 COMMISSIONER BALCH: I think so. I think I
14 like -- I'm pretty happy with C.(1).

15 C.(2), we had some discussion about how do
16 you track these deferrals?

17 CHAIRWOMAN RILEY: Uh-huh.

18 COMMISSIONER BALCH: How would you track
19 those deferrals?

20 CHAIRWOMAN RILEY: I don't know. I mean, I
21 can see -- I can see some room for this to get lost. My
22 concern would be change of operator and whether or not
23 it got -- got completed or that deferral goes along with
24 that change of operator and how to track it. I'm
25 hopeful that new RDBMS software will be able to do that.

1 COMMISSIONER MARTIN: You want to associate
2 it with the well so it follows the well?

3 COMMISSIONER BALCH: Well, I think the
4 discussion was you would have an open -- an open -- it
5 wouldn't be closed.

6 COMMISSIONER MARTIN: Yeah.

7 COMMISSIONER BALCH: You'd have an open
8 case.

9 COMMISSIONER MARTIN: That's true.

10 COMMISSIONER BALCH: So how are those
11 tracked? Every once in a while, someone says, "What's
12 going on with this"?

13 CHAIRWOMAN RILEY: Uh-huh. I think that's
14 done on a district-by-district basis. But just knowing
15 how change of operator takes place, it's not a flag
16 currently.

17 COMMISSIONER MARTIN: The remediation plan
18 operates independently of the operator. It would either
19 exist or not exist -- open or closed or closed forever.

20 COMMISSIONER BALCH: So if a property
21 changes hands, that remediation plan goes with it or
22 certainly the responsibility goes with it. But that new
23 operator may not realize they're a responsible party for
24 that, the cleanup.

25 COMMISSIONER MARTIN: It goes with the

1 location. It stays with the location.

2 CHAIRWOMAN RILEY: Right. Then I suppose
3 one place could do it. And in the change-of-operator
4 form currently, there is an attestation place. And the
5 only thing is that the operator that is changing, that
6 currently has the property, they have to say that all
7 BGTs have been taken care of properly. I don't have the
8 language off the top of my head, but we could add that
9 to the rest of the form, sign off for the operator
10 purchasing, which maybe it's in there. There are
11 probably ten things that have to be initialed that says,
12 I will, you know, make sure all these things are done,
13 and I take responsibility for -- maybe I should pull it
14 up and see if that's included. But the problem is that
15 it isn't necessarily going to flag it. It's not going
16 to say there is one.

17 COMMISSIONER BALCH: Is it online?

18 COMMISSIONER MARTIN: The RP -- the RP
19 should remain open.

20 Doesn't that occur anyway? If somebody --
21 if an operator change happens, don't they acquire the
22 assets and liabilities of that particular location?

23 MR. BRANCARD: That would be my legal
24 opinion, but I'm sure there are others who would
25 disagree with me.

1 COMMISSIONER MARTIN: That's why there are
2 lawyers.

3 COMMISSIONER BALCH: I think the real thing
4 is you want to make sure that somebody at the OCD who is
5 approving the transfer is aware and then makes the new
6 operator aware that there is that ongoing deferral.

7 MR. BRANCARD: I mean, this may sound a
8 little extreme, but one way to do that is to approve
9 deferrals in some sort of Division order.

10 COMMISSIONER MARTIN: That's a lot of work
11 you're talking about.

12 COMMISSIONER BALCH: Well, they don't
13 necessarily have to go through a hearing.

14 MR. BRANCARD: No. It doesn't have to go
15 through a hearing.

16 COMMISSIONER BALCH: It could be a memo.

17 MR. BRANCARD: It's an administrative
18 order.

19 COMMISSIONER MARTIN: How is an order
20 tracked any more efficiently than the RP, I guess is my
21 question?

22 MR. BRANCARD: I assume the order is
23 assigned to the location.

24 COMMISSIONER MARTIN: So is the RP.

25 COMMISSIONER BALCH: So I kind of like the

1 idea of implementing change-of-operator requirements,
2 and if it's not in there now, we just stipulate in the
3 order that it be added to that.

4 MR. BRANCARD: I would think if you had a
5 document --

6 CHAIRWOMAN RILEY: It's here. "I
7 understand that if I acquire wells from another
8 operator, the OCD must approve the operator change,
9 before I begin operating those wells. I understand that
10 if I acquire wells or facilities subject to a compliance
11 order addressing inactive wells or environmental
12 cleanup, before the OCD will approve the operator
13 change, it may require me to enter into an enforceable
14 agreement to return those wells to compliance."

15 MR. BRANCARD: This is why you need an
16 order. It has to be an order.

17 COMMISSIONER MARTIN: Seems like an extra
18 step to me, but --

19 COMMISSIONER BALCH: I wish I had a feel
20 for how common occurrence this is.

21 COMMISSIONER MARTIN: There are spills on
22 location all the time.

23 CHAIRWOMAN RILEY: There's one occurring
24 right now.

25 COMMISSIONER BALCH: If you have a spill

1 next to a tank, you're going to clean up the area
2 underneath the tank. You don't want to remove the tank
3 and ask for a deferral.

4 CHAIRWOMAN RILEY: Actually, I won't say
5 that. It's not a deferral. There is a case out there
6 right now of change of operator and the cleanup didn't
7 happen with operator one. Now, there's a fight of who's
8 got to do it. But --

9 COMMISSIONER BALCH: So the order would
10 make that chain of custody basically more clear, and
11 they would already have agreed to be subject to any
12 orders that are attached to that process.

13 COMMISSIONER MARTIN: I'm not opposed to
14 that. I think it's unnecessary work, but that's okay.
15 You're creating work that's not necessary, in my
16 opinion.

17 COMMISSIONER BALCH: That's just for the
18 director (laughter).

19 CHAIRWOMAN RILEY: So -- but why -- I mean,
20 why couldn't we add to this if -- if there is any
21 deferred cleanup? I mean, just put one more sign-off on
22 here, that the cleanup be taken care of by the new
23 operator.

24 COMMISSIONER BALCH: We could state that in
25 the new order, right?

1 COMMISSIONER MARTIN: Yeah.

2 MR. BRANCARD: Yeah. The order would allow
3 you to tailor the situation to whatever. I mean,
4 every -- every deferral is going to be different.

5 COMMISSIONER BALCH: I mean the order for
6 this rule. We can stipulate that they add that to the
7 change-of-operator form.

8 MR. BRANCARD: Oh.

9 COMMISSIONER MARTIN: Oh, I see what you're
10 talking about. I was confused.

11 COMMISSIONER BALCH: And then they -- at
12 least there's a chain of custody that's affirmed, and
13 it's something that whoever is approving the operator
14 form would then go check, presumably, if they're doing
15 their job. Then we only have to do it in one order.

16 COMMISSIONER MARTIN: I see what you're
17 saying. One order that covers everything, not an order
18 in each specific instance. I see what you're saying.

19 MR. BRANCARD: And even if you don't have a
20 change of operator, you still have to track this.

21 COMMISSIONER MARTIN: It's done with the
22 RP. It exists in the RP database, regardless, as an
23 environmental event.

24 COMMISSIONER BALCH: So when you go to
25 close your tank battery --

1 COMMISSIONER MARTIN: Right.

2 COMMISSIONER BALCH: -- it would pop up?

3 But I do think it's important to, you know -- that it's
4 something of a transfer thing. We could do that with
5 the order for this rule.

6 COMMISSIONER MARTIN: I agree.

7 COMMISSIONER BALCH: Stipulate that that's
8 added to the list of --

9 COMMISSIONER MARTIN: Yeah.

10 CHAIRWOMAN RILEY: Forms that need fixing
11 or change, the C-141 and now this 145. Both need
12 adjustments.

13 COMMISSIONER BALCH: And when they go to
14 close it, it will pop up regardless of the RP database.

15 COMMISSIONER MARTIN: Right. Right.

16 COMMISSIONER BALCH: So it's accomplished
17 that way. We just have to make sure that we stipulate
18 that in the order.

19 MR. BRANCARD: So what are we directing? I
20 kind of got lost.

21 COMMISSIONER BALCH: You have the language
22 for that.

23 CHAIRWOMAN RILEY: I think we just add --
24 under the C-145, the second page of that has a list of
25 things that the new operator is initialing, saying I

1 agree to all this stuff, and I think we just add a
2 paragraph that says any environmental deferrals or C-141
3 deferrals -- however you want to phrase that -- I will
4 be responsible for.

5 COMMISSIONER BALCH: "Any remediation under
6 the" -- "any deferred remediation on the C-141."

7 CHAIRWOMAN RILEY: Uh-huh.

8 COMMISSIONER BALCH: We don't have to worry
9 about that. The Division can make that up.

10 MR. BRANCARD: So maybe -- I'm just
11 concerned we don't have a paper trail at all here.

12 COMMISSIONER BALCH: We have a digital
13 trail in the RP database.

14 MR. BRANCARD: Well, so how about if -- I
15 mean, would you-all be offended if it says, you know,
16 "may be deferred with Division approval" -- "with
17 Division written approval"?

18 CHAIRWOMAN RILEY: Well, it says that
19 already in paragraph two right after "may be deferred."
20 It says, "with division approval."

21 COMMISSIONER BALCH: He's saying written.

22 CHAIRWOMAN RILEY: Oh. Yeah.

23 MR. BRANCARD: I'm saying written. There
24 is a -- there is a deferral document out there.

25 CHAIRWOMAN RILEY: Yeah. No, I agree.

1 Yeah.

2 COMMISSIONER BALCH: Then there is a --
3 then there is a file and the database.

4 CHAIRWOMAN RILEY: Yes. I like that.

5 COMMISSIONER MARTIN: Yeah.

6 COMMISSIONER BALCH: And then with the
7 change to the C-145, I think that that takes care of
8 tracking those deferred remediation efforts.

9 MR. BRANCARD: I mean, I just have a sense
10 that there may be a lot of these.

11 CHAIRWOMAN RILEY: Currently or later?

12 MR. BRANCARD: Well, now that we're --- now
13 that you're creating this whole process --

14 CHAIRWOMAN RILEY: Oh.

15 MR. BRANCARD: -- that everybody that has a
16 release has to go through, that if there is a way out of
17 it, like a deferral, that people will want to take
18 advantage of that.

19 COMMISSIONER MARTIN: But there has to be
20 specific circumstances to warrant the deferral.

21 COMMISSIONER BALCH: Like a --

22 COMMISSIONER MARTIN: You can't just get a
23 deferral --

24 MR. BRANCARD: Yeah. There has to be
25 certain findings, and I think that's where a document

1 of -- some sort of written document from the Division
2 saying, This is why we're deferring, you know. If the
3 tank goes away, then they have to do the work.

4 COMMISSIONER MARTIN: Okay.

5 COMMISSIONER BALCH: Yeah. Certainly if
6 you're -- if you're an operator taking over a property,
7 you want to know if there is a \$500,000 cleanup waiting
8 for you at the end of the day.

9 COMMISSIONER MARTIN: Right.

10 CHAIRWOMAN RILEY: So I'm good with (2).

11 COMMISSIONER BALCH: With that, yes.

12 COMMISSIONER MARTIN: So moving on to
13 12C.(2)? Is that where we're at?

14 COMMISSIONER BALCH: We just finished that
15 one, I think.

16 CHAIRWOMAN RILEY: Yeah. We're on (3).

17 COMMISSIONER BALCH: I think I'm okay with
18 (3) also.

19 COMMISSIONER MARTIN: Me, too.

20 CHAIRWOMAN RILEY: Me, too.

21 MR. BRANCARD: I guess I'm a little
22 concerned that we say in each of these that the
23 reclamation is according to the standards of Table 1.
24 Okay? But then in 11, under (5)(a), (5)(e), we all
25 agreed that the standards for remediation differ if

1 there are other chemicals present.

2 COMMISSIONER MARTIN: Some constituents are
3 not -- do not appear in Table 1.

4 COMMISSIONER BALCH: I'm guessing the
5 intent there is that if there is, say, a
6 hazardous-chemical spill, then you're setting this
7 aside, and you're going to RCRA or something like that
8 instead, mainly.

9 MR. BRANCARD: I think the assumption under
10 C.(5)(e) is that it's still a Division cleanup. It's
11 just the standards are different because you now have
12 different chemicals.

13 COMMISSIONER BALCH: The standards are
14 different.

15 COMMISSIONER MARTIN: That's right.

16 COMMISSIONER BALCH: Well, all those places
17 where we say Table 1 of 19.15.29.12, you could add an
18 additional statement, "or other applicable standards,
19 according to 11(5)" -- whatever it is, 11E.(5).

20 MR. BRANCARD: Yeah, 11E.(5).

21 COMMISSIONER BALCH: So wherever we have
22 that: -- "to the standards of the table in 19.15.29.12
23 NMAC or applicable standards as delineated by 11E.(5)."
24 Will that be all right?

25 COMMISSIONER MARTIN: Okay.

1 COMMISSIONER BALCH: Just make it a little
2 more clear, apples and apples.

3 CHAIRWOMAN RILEY: Uh-huh.

4 COMMISSIONER MARTIN: (Indicating.)

5 COMMISSIONER BALCH: And that's going to
6 show up in a few places in here.

7 MR. BRANCARD: Yes.

8 COMMISSIONER BALCH: It looks like Section
9 4 really just mirrors the sensitive areas from Rule 17.

10 COMMISSIONER MARTIN: Right, which I've
11 already improved twice now.

12 CHAIRWOMAN RILEY: I'm good with it.

13 I'm good with (5).

14 COMMISSIONER MARTIN: Me, too.

15 COMMISSIONER BALCH: So what if -- again,
16 this is probably something that's not going to -- 60
17 days rolls by and the plan's not approved, and it
18 happened because it was on somebody's desk who went on
19 vacation and buried under a pile of stuff. So the
20 reason for it not being approved was --

21 COMMISSIONER MARTIN: Unintentional.

22 COMMISSIONER BALCH: The operator --
23 responsible party could ask for that, and that's what
24 the answer would be?

25 CHAIRWOMAN RILEY: Well, it says, "If the

1 responsible party disagrees with any conditions of
2 approval or denial of the plan, it shall consult with
3 the division or file an application...." So
4 "consultation" would fix that.

5 COMMISSIONER MARTIN: Yeah.

6 COMMISSIONER BALCH: Good enough for me.

7 MR. BRANCARD: And Mr. Price raised a
8 concern here and elsewhere about if this was going to
9 force a lot of hearings. That's why I asked the NMOGA
10 witness about what they thought consult meant, and they
11 saw that as the opportunity to work things out
12 informally instead of having a hearing.

13 COMMISSIONER MARTIN: I think the vast
14 majority can be worked out before a hearing is
15 necessary.

16 COMMISSIONER BALCH: That's probably worth
17 mentioning in this section of closure reporting also.

18 COMMISSIONER MARTIN: Are you on D?

19 COMMISSIONER BALCH: Yeah.

20 COMMISSIONER MARTIN: Oh, you're on D?

21 COMMISSIONER BALCH: Let's see. I'm trying
22 to keep all my versions in order here.

23 We're on C.

24 CHAIRWOMAN RILEY: Did you have a point to
25 make on the --

1 COMMISSIONER BALCH: No. EDF had another
2 proposed change, but that's on the closure reporting, D.
3 We'll address that when we get there.

4 So did we want to talk about Mr. Price's
5 concern about extensive number of hearings arising from
6 this?

7 MR. BRANCARD: I think --

8 CHAIRWOMAN RILEY: I think we did, which
9 is --

10 COMMISSIONER MARTIN: Yeah. I don't think
11 it's a legitimate concern, particularly.

12 COMMISSIONER BALCH: I think we probably
13 fixed it with the changes to the C-145 and things like
14 that.

15 COMMISSIONER MARTIN: Okay.

16 COMMISSIONER BALCH: Section C, of course,
17 is when we were kicked out of our own room for an hour
18 yesterday afternoon, and the parties came together.

19 COMMISSIONER MARTIN: Used to be C.

20 CHAIRWOMAN RILEY: Now it's D.

21 COMMISSIONER BALCH: Now D. I'm
22 comfortable with the language they came up with.

23 COMMISSIONER MARTIN: I am, too.

24 COMMISSIONER BALCH: It captures the
25 intents and concerns of all parties.

1 COMMISSIONER MARTIN: Right.

2 COMMISSIONER BALCH: So on closure
3 reporting, which is now E, EDF also proposed that the
4 landowners be given the closure report.

5 CHAIRWOMAN RILEY: And I think for the same
6 reasons that we stated earlier, that would not be
7 appropriate.

8 COMMISSIONER MARTIN: I agree.

9 COMMISSIONER BALCH: Yeah, for the same
10 reasons that we discussed under Release Notification.
11 They're not going to need to do it again.

12 COMMISSIONER MARTIN: Right.

13 CHAIRWOMAN RILEY: I'm good with (1) and
14 (2).

15 COMMISSIONER BALCH: Uh-huh, and the famous
16 Table 1.

17 MR. BRANCARD: So in (2), I added the
18 language about -- I assume the goal there was to make
19 this similar to the previous section about the written
20 summary of deficiencies.

21 CHAIRWOMAN RILEY: Yeah. I like it.

22 MR. BRANCARD: I just took that out of the
23 previous C.(5).

24 COMMISSIONER BALCH: That's good.

25 CHAIRWOMAN RILEY: In Table 1, do we need

1 to change the "horizontal extents" to the same
2 "boundary" language that we had earlier?

3 COMMISSIONER BALCH: Well, I had -- I had
4 discussed this yesterday, and I think the intent was
5 that the depth -- the minimum depth below the horizontal
6 boundary of a release would be the same language we used
7 before, with the word "minimum." So anywhere underneath
8 that boundary, if you get within 49 feet, you provide
9 the top part of the table.

10 COMMISSIONER MARTIN: I think that's the
11 intent.

12 COMMISSIONER BALCH: That's the intent.

13 CHAIRWOMAN RILEY: Okay.

14 COMMISSIONER BALCH: So I would say
15 "minimum depth below the horizontal boundary of" --
16 "below any point within the horizontal boundary of a
17 release to groundwater."

18 MR. BRANCARD: "Below any" --

19 COMMISSIONER BALCH: "The minimum depth
20 below" --

21 MR. BRANCARD: "Any point."

22 COMMISSIONER BALCH: "Any point beneath the
23 horizontal extent of a release to groundwater."

24 MR. BRANCARD: "Extent" or "boundary"?

25 COMMISSIONER BALCH: "Minimum of any point

1 beneath the horizontal."

2 MR. BRANCARD: "Extent" --

3 COMMISSIONER BALCH: "Extent" is better in
4 this case.

5 MR. BRANCARD: Yeah, in this case, because
6 you're not going out from the outside. You're going to
7 anything underneath it.

8 COMMISSIONER MARTIN: You like "extent"
9 better?

10 COMMISSIONER BALCH: I would say "within
11 the horizontal boundary" covers it.

12 MR. BRANCARD: Oh, "within"? Okay. So
13 it's "depth below any point within the horizontal
14 boundary of a release."

15 COMMISSIONER BALCH: "Of a release."
16 "Minimum depth below."

17 COMMISSIONER MARTIN: "Minimum depth
18 below"?

19 COMMISSIONER BALCH: Yes. You may have a
20 contouring surface of your groundwater, for example,
21 more likely sloping in one direction. But if at any
22 point more than 50 feet, you have to apply the more
23 stricter standard.

24 COMMISSIONER MARTIN: Okay.

25 COMMISSIONER BALCH: Also EDF proposed

1 changes to Table 1. In particular, they wanted to
2 increase the stringency of limits on -- or decrease the
3 limits on benzene, chlorides -- benzene and chlorides.

4 MR. BRANCARD: Right.

5 COMMISSIONER BALCH: And I reviewed their
6 justification within the filing that they made, and it's
7 the same arguments that were heard and not accepted in
8 Rule 17. So I think without a fresh round of testimony
9 and a rehearing of those limits, it would be improper
10 for us to change those on this table based upon that
11 analysis that was given.

12 COMMISSIONER MARTIN: I agree.

13 CHAIRWOMAN RILEY: I agree.

14 COMMISSIONER MARTIN: No changes to
15 Table 1.

16 COMMISSIONER BALCH: Well, one change.

17 COMMISSIONER MARTIN: Except for the 45.

18 COMMISSIONER BALCH: We simply didn't have
19 new evidence that would overturn what was previously
20 determined. I'm not sure we could change it even if we
21 wanted to without that.

22 MR. BRANCARD: Well, I think it would be
23 difficult to change the table without technical
24 testimony.

25 COMMISSIONER BALCH: Yeah. And there

1 wasn't any on the --

2 MR. BRANCARD: We have from Cardinal Labs,
3 but we don't have it from --

4 COMMISSIONER BALCH: Which brings us to the
5 other change in Table 1, which is the addition of
6 SM 4500 Cl-B, under chlorides, as an alternative to EPA
7 430.

8 COMMISSIONER MARTIN: Yes.

9 COMMISSIONER BALCH: I was satisfied with
10 the testimony that justified adding that to the limit.
11 And, in fact, it's been a standard practice for 25 years
12 for the lab at least since '08 off and on, and for the
13 Division as --

14 CHAIRWOMAN RILEY: And the parties all
15 agree to it. Yeah. I'm comfortable with that.

16 COMMISSIONER BALCH: SM 4500 Cl -- Cl-B. I
17 think you might want to check on -- you've got it in
18 there, right? Okay. I think that's the way it is
19 written. With that, I'm happy with Table 1.

20 COMMISSIONER MARTIN: I am, too.

21 CHAIRWOMAN RILEY: I am, too.

22 That gets us to 13, which is "Restoration,
23 Reclamation and Re-Vegetation."

24 COMMISSIONER BALCH: All right. So OGAP,
25 in their May 22nd comments on the draft rule, under

1 Section 13E, suggested adding some language relating to
2 surface-use agreements. So when we get to Section E, we
3 probably ought to address that comment.

4 COMMISSIONER MARTIN: Okay. Are you okay
5 with A?

6 CHAIRWOMAN RILEY: I like A.
7 I like B.

8 COMMISSIONER BALCH: I think C actually
9 addresses the concern of Mr. Boyd.

10 COMMISSIONER MARTIN: Uh-huh.

11 CHAIRWOMAN RILEY: Uh-huh. Yes, it does.

12 COMMISSIONER MARTIN: I agree.

13 COMMISSIONER BALCH: He was particularly
14 concerned with ponding and -- concentrate, harmful
15 constituents to groundwater.

16 COMMISSIONER MARTIN: That's also covered
17 in A for erosion control and words to that effect. He
18 also had a problem with -- or a comment about that.

19 COMMISSIONER BALCH: I like in D where they
20 have the qualifier of "further final land use." They're
21 supposed to remediate disturbed areas by remediation and
22 closure, "as early and as nearly as practical to their
23 original condition or final land use...."

24 CHAIRWOMAN RILEY: I like it, too,
25 because --

1 COMMISSIONER BALCH: So I'm wondering if
2 that same terminology gets to be applied to A, "The
3 responsible party must substantially restore the
4 impacted surface areas to the condition that existed
5 prior to the release, which may be the case, or "their
6 final land use" might be a more appropriate target.

7 CHAIRWOMAN RILEY: Well, I was trying to
8 figure out what the difference is between A and D. Is A
9 the actual site and how it's intended to be used as --

10 COMMISSIONER BALCH: So A is the actual
11 area of the spill, and D covers that area -- it maybe
12 doesn't cover that area, but it covers all the bulldozer
13 and things that impact the release.

14 CHAIRWOMAN RILEY: "Areas reasonably needed
15 for production operations or for subsequent drilling
16 operations." So it's including that that was used for
17 remediation and closure and the actual facility itself.

18 COMMISSIONER BALCH: Yeah. So D just
19 really covers all your truck-tire prints and tracks if
20 you have to make a road or you have to put a surface
21 line or something like that.

22 COMMISSIONER MARTIN: Right.

23 COMMISSIONER BALCH: But I wonder if you
24 want to qualify A the same way. A couple of reasons why
25 you might want to do that: Say you're remediating a

1 berm, then you want to restore to its previous
2 condition, but which previous condition are you
3 restoring it to? Are you restoring it to the original
4 native condition, or are you restoring it to its desired
5 use condition, which is probably the replacement of a
6 berm.

7 CHAIRWOMAN RILEY: And I read that --

8 COMMISSIONER BALCH: It says "existed prior
9 to the release."

10 CHAIRWOMAN RILEY: That "final land use,"
11 what I think is handy about having that in there is
12 that, you know, you could potentially have -- whether
13 it's the State Land Office or a private landowner or
14 whatever that may want -- so "original condition" is
15 tough because -- it's hard for me to follow this when
16 you're talking about, you know, the remediation
17 operations and you have tire tracks or whatever that
18 help to get it remediated, but then you also have your
19 actual facility, and you don't have approval for the
20 tire tracks and all that, except that you had to get in
21 there for an emergency, which is not part of your
22 disturbed area. So there's that. You've sort of got an
23 apple and an orange in a basket.

24 And then say you're looking at part of your
25 disturbed area and there is a piece of it that

1 doesn't -- the landowner doesn't want it to go back to
2 that original condition that it existed prior and wants
3 to make it into an oil and gas facility. Maybe they
4 want that road or they want -- so I like the "final land
5 use" because it allows for some flexibility of the
6 process and what's to be reclaimed to.

7 COMMISSIONER BALCH: So I think that was --
8 that was good in A: "The responsible party must
9 substantially restore the impacted surface areas to the
10 condition that existed prior to the release or their
11 final land use."

12 COMMISSIONER MARTIN: Sure.

13 CHAIRWOMAN RILEY: Okay.

14 COMMISSIONER MARTIN: You okay with that?

15 CHAIRWOMAN RILEY: Uh-huh. Yeah.

16 COMMISSIONER MARTIN: Yeah. I'm okay.

17 COMMISSIONER BALCH: I don't want a
18 condition where you have to ask for a variance because
19 you went out there -- you were drilling and you had a
20 release and then you have to restore the land or maybe
21 just bulldoze it and put a pad in.

22 CHAIRWOMAN RILEY: Yes. I'd like to think
23 no one would go there, but --

24 COMMISSIONER BALCH: Well, it would require
25 a variance, which we like, but we don't want to happen

1 very often.

2 CHAIRWOMAN RILEY: Did we have some
3 conversation around D.(1)?

4 COMMISSIONER BALCH: We did, and
5 particularly -- actually, Wayne Price brought that up
6 also, the specificity of a 4-foot rule being overly
7 prescriptive and doesn't allow you to do things like
8 blend soils and whatnot. And my counter to that would
9 be the basis for that 4 feet is -- is Rule 17. And
10 under Rule 17, there was extensive testimony about what
11 fitness and quality of soil you needed to establish
12 these systems of native vegetation in the southwest. So
13 I would hesitate to go away from those requirements.

14 COMMISSIONER MARTIN: I agree.

15 COMMISSIONER BALCH: I would rather mirror
16 what was already the extensive testimony of that rule.

17 COMMISSIONER MARTIN: Absolutely.

18 MR. BRANCARD: Yeah. I mean, that sentence
19 is taken directly from Rule 17.

20 COMMISSIONER BALCH: Yup, which went
21 through extensive hearing and rehearing and then also
22 many different levels of appeal and has finally stood
23 through all of that. So second-guessing that would be a
24 bad thing.

25 CHAIRWOMAN RILEY: Okay.

1 COMMISSIONER BALCH: So (2) and (3) and (4)
2 is just a notification requirement. So is that
3 notification going to come through a C-141 or a C-102
4 [sic]?

5 CHAIRWOMAN RILEY: Why wouldn't this be
6 included in --

7 COMMISSIONER MARTIN: It's subsequent to
8 the 141. It could occur -- it could occur after --
9 after that.

10 COMMISSIONER BALCH: Submit a modified
11 C-141?

12 CHAIRWOMAN RILEY: Yeah.

13 COMMISSIONER MARTIN: I'm not sure what the
14 practice is, but I would consider that just an
15 informal -- as an email of some sort, notification so
16 they can check out there and close the site. But if we
17 want a formal --

18 COMMISSIONER BALCH: The end result would
19 be to notify, and then there is a closure check box
20 somewhere in the database --

21 COMMISSIONER MARTIN: Right.

22 COMMISSIONER BALCH: -- so it's tracked.

23 COMMISSIONER MARTIN: I think so.

24 COMMISSIONER BALCH: All right. Do we want
25 to have lunch before we tackle variance enforcement?

1 COMMISSIONER MARTIN: You're okay with E?

2 CHAIRWOMAN RILEY: Yeah.

3 COMMISSIONER BALCH: E's good. "Equal or
4 better protection," that's the key.

5 COMMISSIONER MARTIN: I've got one quick
6 question, if we could go back a little bit to
7 29.11A.(5)(b).

8 COMMISSIONER BALCH: "Minor integrity"?

9 COMMISSIONER MARTIN: No. Soil sampling
10 methods. Did I misstate?

11 CHAIRWOMAN RILEY: No, you're good.

12 COMMISSIONER MARTIN: Am I?

13 CHAIRWOMAN RILEY: Yeah, page 3.

14 COMMISSIONER MARTIN: Are you on page 3?

15 CHAIRWOMAN RILEY: Yeah. It's that one
16 (indicating).

17 COMMISSIONER BALCH: "If the responsible
18 party is unable to demonstrate liner integrity...."?

19 COMMISSIONER MARTIN: Oh, yes. Right. I'm
20 sorry. I missed that part. I was mainly concentrating
21 on the soil sampling methods specified.

22 COMMISSIONER BALCH: Okay.

23 COMMISSIONER MARTIN: Bill, can you read me
24 back the language that we're changing that to?

25 MR. BRANCARD: Sure. "The operator shall

1 use one of the following soil sample methods for
2 characterization." I'm not sure that's the best way to
3 put it.

4 COMMISSIONER MARTIN: My concern is if one
5 of those was sufficient, that the Division would have
6 proposed it that way to begin with in the committee
7 meetings. So maybe those are not stand-alone and
8 standard. I'm not sure what the answer is to that.

9 MR. BRANCARD: I actually thought about
10 this when I was discussing it with the witness, that
11 maybe another way of saying it is "shall use one or
12 more."

13 COMMISSIONER MARTIN: I think that would be
14 all right.

15 MR. BRANCARD: I don't know if these are
16 stand-alone, particularly if the Division is approving a
17 method and maybe that method works with one of the other
18 methods.

19 COMMISSIONER MARTIN: That's what I'm
20 thinking. I'm not sure myself, but "one or more" is
21 fine by me.

22 CHAIRWOMAN RILEY: That works, "one or
23 more."

24 COMMISSIONER MARTIN: Lunch now?

25 CHAIRWOMAN RILEY: Yes.

1 COMMISSIONER BALCH: Lunch is good.

2 CHAIRWOMAN RILEY: We'll think so much
3 better.

4 Why don't we be back at -- it's 12:00 now.
5 1:15? Does that give everybody enough time? That extra
6 15 minutes is good?

7 (Recess, 11:55 a.m. to 1:17 p.m.)

8 CHAIRWOMAN RILEY: We are at -- there are
9 three pieces to this, so let's start with "Variances,"
10 29.14.

11 COMMISSIONER BALCH: It's pretty much in
12 line with all the variance language we've been using
13 since Rule 17, right?

14 MR. BRANCARD: Right. It would seem that
15 we do provide notice to the surface owner here, which is
16 also in Rule 17.

17 CHAIRWOMAN RILEY: I'm good with it.

18 COMMISSIONER BALCH: So are we moving on to
19 "Enforcement"?

20 COMMISSIONER MARTIN: Yeah.

21 CHAIRWOMAN RILEY: Yeah.

22 COMMISSIONER BALCH: So in B, that language
23 at the end, "Any administrative compliance order will
24 have the same force and effect as a compliance order
25 issued after an adjudicatory hearing," is that a

1 hearing -- a new type of --

2 CHAIRWOMAN RILEY: I don't think so. I
3 think this has all been copied out of other --

4 COMMISSIONER BALCH: Compliance orders
5 already do that.

6 MR. BRANCARD: Yeah.

7 CHAIRWOMAN RILEY: So one thing on C, Bill,
8 if we could talk about where the "director's designee"
9 was struck and "division" put in, I think that that came
10 out of -- I'm looking for it. Yeah. That came out of
11 19,15.29.10A, how it's worded there.

12 COMMISSIONER MARTIN: I thought we wanted
13 to put some reference to that in that part, C.

14 CHAIRWOMAN RILEY: Yeah. We talked about
15 that, and it seemed like a really good idea to me at
16 that time.

17 COMMISSIONER MARTIN: Now it doesn't?

18 CHAIRWOMAN RILEY: It doesn't.

19 COMMISSIONER BALCH: A reference to 5.10 on
20 enforcement?

21 CHAIRWOMAN RILEY: Yeah. Yeah, because
22 5.10 is how to bring an enforcement compliance
23 proceeding. It's not really specific to the particular
24 chapter or issue. So --

25 COMMISSIONER MARTIN: Because you want to

1 refer to something that stipulates authorization of
2 transport but specifically could be withdrawn. I
3 thought that was discussed in the C-104.

4 CHAIRWOMAN RILEY: Yeah. So in 19.15.5.10,
5 it talks about all of the sanctions that could be
6 applied for any violation. So I think we would just
7 need to decide if we want that to be part of this.

8 MR. BRANCARD: Part of C?

9 CHAIRWOMAN RILEY: Uh-huh.

10 MR. BRANCARD: So the way I understood it
11 from the questioning is that A simply says you have to
12 comply, and if you don't comply, the Division may take
13 enforcement action. Okay? So enforcement action would
14 be governed by 5.10. Okay?

15 CHAIRWOMAN RILEY: Uh-huh.

16 MR. BRANCARD: Then it says you can have --
17 the Division can have an agreed compliance order. And
18 then C, though, is sort of the next step, that once you
19 have an order, right, either from a court or an agreed
20 order or an order that comes out of a hearing, when you
21 violate that, then the Division can deny any
22 application, right, if you're not in compliance?

23 CHAIRWOMAN RILEY: But you have to go
24 through?

25 MR. BRANCARD: I'm assuming that step,

1 then, is not necessary you have to go to a hearing.
2 It's just an automatic power to the Division to deny
3 that.

4 COMMISSIONER BALCH: So do you refer --

5 MR. BRANCARD: And if you don't like it, if
6 it gets denied, then the person who has been denied can
7 ask for a hearing.

8 COMMISSIONER BALCH: So do you --

9 MR. BRANCARD: So this is sort of an
10 extraordinary compliance procedure. So the normal
11 compliance procedure: You're in violation, and the
12 Division goes to -- requests a hearing to take whatever
13 action against you. Okay? But then they get an order
14 from that hearing or from a court or wherever, or they
15 enter into an agreed order with you -- okay; I'm going
16 to get back into compliance if I do the following
17 steps -- and then you violate that, so now if you
18 violate that, the Division has the ability to deny any
19 application you submit without going to hearing, that
20 you simply apply for an application, it gets denied. At
21 that point, you can always take that denial to a
22 hearing. You, the applicant, would then appeal to a
23 hearing.

24 COMMISSIONER BALCH: So maybe the thing to
25 do is refer to 5.10 in A because C is a special case

1 after that.

2 MR. BRANCARD: I think that's true. I
3 think 5.10 is more applicable to A than it is to C.

4 COMMISSIONER BALCH: So "The responsible
5 party must comply with all the requirements of 19.15.29
6 NMAC. The division may take enforcement action against
7 any responsible party who does not comply with 19.15.29
8 NMAC pursuant to 19" whatever, "5.10."

9 MR. BRANCARD: Okay. All right.

10 CHAIRWOMAN RILEY: So then we go into the
11 agreed compliance order, which is fine. And then C is
12 where -- I'm trying to get my head around C.

13 COMMISSIONER MARTIN: If you're going to
14 add 5.10 and A, do you even need C?

15 MR. BRANCARD: No, because C is -- like I
16 said, it's the next step, right? It's after you've
17 already gone to hearing or after you've already had a
18 compliance order or a court order.

19 COMMISSIONER MARTIN: That's interesting.
20 I didn't read it like that to begin with.

21 COMMISSIONER BALCH: We had quite a bit of
22 discussion about whether or how much teeth the OCD
23 really has in terms of enforcement. It's fairly limited
24 in scope, although it can be severe. I mean, if you
25 remove somebody's right to operate, that puts them out

1 of business.

2 MR. BRANCARD: Yeah, if you remove their
3 authority to transport, if they are an active operator.
4 I mean, the leverage of the Division varies greatly into
5 whether you are a producer or not. If you're simply
6 somebody who holds the well but is not producing, the
7 leverage is not very great. But if you are producing,
8 then the leverage is greater.

9 So the other step on C right now is, if
10 somebody violates one of these orders, the only other
11 option is to go court to enforce that order, which is
12 what the Division has done in a number of cases
13 recently.

14 COMMISSIONER BALCH: That's what's allowed
15 by the statute, basically.

16 MR. BRANCARD: Uh-huh.

17 COMMISSIONER BALCH: So there is no -- I
18 don't think you can expand that authority here. That
19 would have to be another rule change elsewhere.

20 MR. BRANCARD: I mean, we can -- I mean, we
21 can go to court to get penalties. We can't do that --
22 we can't do that by rule, for instance. You can't give
23 yourself -- you can't give the Division authority it
24 doesn't have already. So you couldn't -- you couldn't
25 say that oh, if you violate an agreed compliance order,

1 then you'll be jailed or get penalties. That, the
2 Division doesn't have the authority to do
3 administratively. You would have to go to court to get
4 those remedies.

5 CHAIRWOMAN RILEY: So then if you look at
6 19.15.14.10, which is the approval or denial of
7 approval, under A, "The director or the director's
8 designee may deny a permit to drill, deepen or plug back
9 if the applicant is not in compliance with Subsection A
10 of 19.15.5.9. In determining whether to grant or deny
11 the permit, the director or the director's designee
12 shall consider such factors as whether the
13 non-compliance with Subsection A of 19.15.5.9 is caused
14 by the operator not meeting the financial assurance
15 requirements ... being subject to a division or
16 commission order finding the operator to be in violation
17 of an order requiring corrective action, having a
18 penalty assessment that has been unpaid ... or having
19 more than the allowed number of wells out of
20 compliance."

21 So I think the intent of this, the way they
22 wrote this, was to have standing on its own, something
23 within this rule that allows for sanctions of some type
24 if they were out of compliance, but I don't know if this
25 is correct of how it's being done.

1 In this instance, the way -- it's saying
2 you can deny a permit if they're not in compliance. So
3 it's not whether they're not in compliance with the
4 rule, but they're not in compliance with a court order
5 or an agreed compliance order or an administrative
6 compliance order arising from the rule. So if you kind
7 of think through this logically, you have -- you have an
8 event, and they don't follow the rule. So then at that
9 point, we would have to go to the next step. They may
10 get a letter of violation and a notice of violation. If
11 we get no correction, then we go to an administrative
12 application to the OCD, and then there is an order
13 saying that they are, in fact, in violation. So now we
14 have an order, and then they don't comply with the
15 order.

16 MR. BRANCARD: Uh-huh.

17 CHAIRWOMAN RILEY: So then that's where
18 this would come in. Is it necessary at that point, or
19 would you just address it in the order and say, "Until
20 you've complied with 29, you can't have any -- I don't
21 know. I mean, I'm --

22 MR. BRANCARD: Well, this provision does
23 relate directly to that, 14.10. Okay?

24 CHAIRWOMAN RILEY: Okay.

25 MR. BRANCARD: Because 14.10 says if you're

1 not in compliance with 5.9, which is different than
2 5.10, right, but then it sort of lists the types of
3 things that you can be out of compliance with in 5.9,
4 which includes being subject to a Division or Commission
5 order finding the operator can be in violation of the
6 order requiring corrective action.

7 COMMISSIONER BALCH: Which would be a
8 compliance order?

9 MR. BRANCARD: Right.

10 CHAIRWOMAN RILEY: Right. But the other
11 thing is if they're in violation and don't have proper
12 financial assurance or if they're outside of -- see, you
13 don't have to have an order, in this scenario, saying
14 somebody's out of compliance. They just have to show up
15 on the list as having over the threshold of inactive
16 wells, and then their APD gets denied. So there is no
17 hearing or order that goes with that being able to deny.
18 So that's where it's different over here.

19 You're taking that step to get an order,
20 and then if they're still in violation, then these
21 things can happen. That's how I'm reading it. And
22 maybe that's okay. I'm just trying to get our head
23 around what we're saying.

24 MR. BRANCARD: So the difference -- if you
25 go back into 5.9 where it defines whether somebody is in

1 compliance or not, you're not in compliance if you don't
2 meet your financial assurance requirements, period. You
3 don't need an order. You don't have to go to hearing.
4 You're out of compliance.

5 But for corrective action, you're subject
6 to an order requiring corrective action. Okay? So 5.9
7 relates back to having -- actually having to have an
8 order about corrective action. So this is sort of an
9 attempt to try to get -- see how this section works with
10 the 5.9 and the 14.10, just sort of clarifying how
11 this -- because previously there were so few details
12 about how to do corrective action. The agency would
13 always have to go to a hearing to try to get an order to
14 require corrective action if somebody wasn't doing it.
15 And here you have rules that people will -- you know, if
16 they don't comply with, they can be in violation and
17 have an order or have a -- an agreed compliance sort of
18 saying, You're out of compliance; now, here's how you
19 get back in compliance. Okay?

20 Well, if you then violate that order, now
21 you're into what 14.10 is looking at, which is you're
22 out of compliance; you can't get a new permit for
23 anything. Okay? So it's trying to take the language
24 that's in 14.10 and 5.9, which is a little -- has become
25 slightly outdated because we have a whole new process

1 here -- slightly outdated -- but it still relates to an
2 order, which is what both 5.9 and 14.10 talk about, an
3 order on corrective action. So it's simply a way to try
4 to relate the process that's been created here into
5 those requirements. Is it absolutely necessary?
6 Possible not. But --

7 CHAIRWOMAN RILEY: Do we need to keep our
8 language the same as 14.10, or is it okay to have it
9 different?

10 COMMISSIONER BALCH: Or just refer back to
11 14.10 and simplify the language.

12 MR. BRANCARD: Well, I think -- I think
13 what this is trying to do is make it clear about how we
14 get to orders under this rule, is basically the
15 equivalent of the orders that are talked about in 14.10.

16 COMMISSIONER MARTIN: So do we want to
17 reference that in A?

18 COMMISSIONER BALCH: So add "pursuant to
19 14.10" at the very end. And then you can keep "the
20 division" because 14.10 already specifically says "the
21 director or the director's designee."

22 MR. BRANCARD: Yeah, it does say --

23 COMMISSIONER BALCH: You can keep the
24 language as proposed. Just add "pursuant to 14.10."

25 MR. BRANCARD: If you think that would help

1 clarify, tie those two sections together.

2 COMMISSIONER BALCH: I was asking for a
3 legal opinion on that.

4 MR. BRANCARD: Yeah (laughter). I think
5 it's fine either way.

6 COMMISSIONER MARTIN: So there is no risk
7 to leaving it this way?

8 MR. BRANCARD: No risk to leaving it this
9 way.

10 COMMISSIONER MARTIN: Okay.

11 CHAIRWOMAN RILEY: But we probably should
12 make the language.

13 COMMISSIONER BALCH: 14.10 will apply
14 anyway.

15 CHAIRWOMAN RILEY: Match. Right.

16 COMMISSIONER BALCH: You're not going to
17 explicitly reference --

18 COMMISSIONER MARTIN: I don't think so.

19 I agree. Just make the language the same.

20 CHAIRWOMAN RILEY: "The director or the
21 director's designee"?

22 MR. BRANCARD: Sure.

23 COMMISSIONER BALCH: It's almost the same,
24 but --

25 MR. BRANCARD: That basically is what the

1 Division is.

2 COMMISSIONER BALCH: This will keep
3 somebody from calling the custodian, get them to write a
4 letter for them.

5 MR. BRANCARD: Yeah.

6 COMMISSIONER BALCH: Or the Division
7 regional office director -- regional office chief.

8 MR. BRANCARD: Yeah. Right. Field office.

9 COMMISSIONER BALCH: Puts it in Santa Fe --

10 MR. BRANCARD: (Indicating.)

11 COMMISSIONER BALCH: -- exclusively.

12 CHAIRWOMAN RILEY: Which does?

13 COMMISSIONER BALCH: If you say "the
14 director or the director's designee."

15 CHAIRWOMAN RILEY: They could have a
16 director's designee in the field.

17 COMMISSIONER BALCH: Sure. But the
18 responsibility still comes from Santa Fe. And the next
19 director may choose not to have a designee in the field
20 office or some future director.

21 MR. BRANCARD: So do we want to go back to
22 the original "the director or the director's designee?"

23 CHAIRWOMAN RILEY: I think they need to
24 match. I don't know which one is the better way.

25 COMMISSIONER BALCH: Well, we can't change

1 14.10.

2 CHAIRWOMAN RILEY: Right.

3 COMMISSIONER BALCH: So --

4 CHAIRWOMAN RILEY: So let's make it match.

5 COMMISSIONER BALCH: That simplifies the
6 process of changing every one.

7 CHAIRWOMAN RILEY: Uh-huh. It doesn't
8 necessarily simplify the process.

9 COMMISSIONER BALCH: Nobody came to us with
10 suggested language for 14.10.

11 MR. BRANCARD: And 14.10 is limited to the
12 permit for drill, deepen or plug back. So this is any
13 application. So you have a waste hauler who comes in
14 for Rule 36 permit, right?

15 COMMISSIONER BALCH: Uh-huh. That's a
16 little bit broader than 14.10.

17 CHAIRWOMAN RILEY: Okay.

18 COMMISSIONER BALCH: Has this been tested
19 in any other rule where you expand that enforcement
20 option in that way?

21 MR. BRANCARD: I mean, we do -- we do have,
22 and it's sort of a bit of a challenge for the legal
23 division because there are specific sort of enforcement
24 provisions in separate rules, you know, whether it's,
25 you know, people haven't filed their forms correctly or

1 on time. Sometimes that triggers a certain enforcement
2 proceeding, but it's in that rule as proposed to in the
3 enforcement rule. So you just -- you know, we have to
4 keep on top of just where the enforcement authority is
5 through the OCC rules.

6 COMMISSIONER BALCH: Well, I mean, this is
7 about a narrow circumstance, so hopefully it will not
8 occur often, and anybody reviewing that case will be
9 reading this rule.

10 MR. BRANCARD: Yeah. I mean, at some point
11 we may want to go back through the rules and sort of
12 pull these things out of here and put them all in -- you
13 know, in the enforcement rule.

14 COMMISSIONER BALCH: That's somebody else's
15 problem.

16 MR. BRANCARD: Not today's problem.

17 CHAIRWOMAN RILEY: As my son would say,
18 "The future means" --

19 COMMISSIONER BALCH: Future is somebody
20 else's problem.

21 CHAIRWOMAN RILEY: Okay.

22 COMMISSIONER BALCH: I think that clarifies
23 it.

24 MR. BRANCARD: So we're going to do the
25 switch back to "director or director's designee"?

1 CHAIRWOMAN RILEY: Yes.

2 And I'm okay with D.

3 MR. BRANCARD: And 19.15.4 is the process
4 rule, so it's often -- it's generally dealing with how
5 you file a proceeding and who gets notice, more
6 importantly.

7 CHAIRWOMAN RILEY: Okay.

8 COMMISSIONER BALCH: So "Transitional
9 Provisions." I think this is really just saying that if
10 you're operating under the old version of the rule, you
11 don't have to switch to this until such date this
12 becomes effective, so any new release report, C-141s
13 that come in.

14 COMMISSIONER MARTIN: After the effective
15 date.

16 COMMISSIONER BALCH: Uh-huh.

17 CHAIRWOMAN RILEY: Yup. I'm good.

18 COMMISSIONER BALCH: Which is fine. That's
19 the cleanest way to do it. They may choose to if it's
20 better or more clear.

21 CHAIRWOMAN RILEY: Do you have something --

22 MR. BRANCARD: Yes, I do.

23 CHAIRWOMAN RILEY: -- for us to review?

24 MR. BRANCARD: Okay. So B.(1), the first
25 phase comes out of 11A. Okay? So 11A is the -- you

1 don't have to characterize the site if you have, you
2 know, remediated and submitted a final closure report
3 within 90 days of the discovery of the release. Okay?
4 So that's the first thing.

5 So that means you have to either then
6 submit a remediation plan or unless the Division
7 determines that you need to do an abatement plan, you do
8 that. Then the last sentence just sort of indicates
9 when you would be -- it's a "may," but I assume it's
10 probably a "shall." But if you have groundwater or
11 contamination above standards, you would need to do an
12 abatement plan.

13 Number (2), then, is the attempt to deal
14 with the deadline.

15 COMMISSIONER BALCH: I think this is much
16 more clear this way.

17 CHAIRWOMAN RILEY: Uh-huh.

18 COMMISSIONER BALCH: The only thing I might
19 do is modify the language in (2) slightly.

20 MR. BRANCARD: Okay.

21 COMMISSIONER BALCH: So "any remediation
22 that exceeds 90 days after division approval of the
23 remediation plan must follow the division-approved
24 timeline proposed within the remediation plan."

25 COMMISSIONER MARTIN: Under your new

1 29.12B.(1), what about the sentence there that allows
2 for an extension request? That's not necessary anymore?

3 MR. BRANCARD: That's gone, but we could
4 put that back in.

5 COMMISSIONER BALCH: I think you still want
6 to have an extension request because there are -- that's
7 a different case.

8 MR. BRANCARD: Right.

9 COMMISSIONER BALCH: That's where you
10 intended to, but you can't; something comes up. Right?

11 MR. BRANCARD: I thought about that, but we
12 hadn't discussed it, so I didn't put it back in. I can
13 put that back in. No problem.

14 So that reads: "The responsible party may
15 request an extension of time to remediate upon showing a
16 good cause as determined by the division."

17 COMMISSIONER MARTIN: Right.

18 COMMISSIONER BALCH: Put that back in.

19 MR. BRANCARD: Put that back in at (2) --
20 at the end of (2), right?

21 CHAIRWOMAN RILEY: I think the second
22 sentence of (2) is circular.

23 COMMISSIONER BALCH: That's the one I just
24 tried to modify.

25 CHAIRWOMAN RILEY: I think we have to start

1 from the beginning. "Any remediation that exceeds 90
2 days from its onset" or whatever. You know, when you
3 begin your 90 days, "must have an approved timeline
4 within the remediation plan" or something to that
5 effect. This is kind of saying anything that exceeds 90
6 days after Division approval of your remediation plan
7 must be approved within the remediation plan, approved
8 by the Division. I think that's got the cart before the
9 horse, or the cart and horse are kind of running
10 together, and that's not a good place to have those two.

11 COMMISSIONER BALCH: And really it just
12 kind of comes across that other concept of being able to
13 just turn in a closure report in that case. So we might
14 just say, "Any remediation that exceeds 90 days must
15 follow a timeline proposed within the remediation plan."
16 That way you will only have the remediation plan one
17 time.

18 CHAIRWOMAN RILEY: "Any remediation plan
19 that exceeds 90 days must have prior approval"?

20 COMMISSIONER BALCH: You're right. Ninety
21 days after approval -- remediation plan. It's not
22 approved yet.

23 COMMISSIONER MARTIN: I'm not sure how this
24 language improves upon --

25 (Laughter.)

1 CHAIRWOMAN RILEY: Okay. Let's go back to
2 what we said before.

3 COMMISSIONER BALCH: I think instead of
4 trying to do a separate concept of the 90 days, you can
5 just submit a closure report or you could go the route
6 of a site plan, remediation plan and a closure report.
7 You want to make sure that's where the 90 days comes in.
8 I think that's why we talked about separating it out.

9 MR. BRANCARD: The 90 days in paragraph (2)
10 is different from the 90 days in paragraph (1). Right?
11 Paragraph (1) is before you even submit a reclamation
12 plan, because you have 90 days to submit a reclamation
13 plan.

14 COMMISSIONER BALCH: Right. That's why we
15 separated it out, two different cases.

16 COMMISSIONER MARTIN: Then I would propose
17 to strike the last sentence in (2), which I don't quite
18 understand anyway. I agree it's circular. I'm not sure
19 it's necessary.

20 COMMISSIONER BALCH: Remediation plan has
21 four or five possibilities -- things you have to list
22 with that, right, one of which is a timeline for the
23 remediation. And this discussion came about -- the
24 reason that language was added in there, in this version
25 of it, was because we wanted to allow other practices

1 than just digging and hauling, which you can usually
2 accomplish within 90 days. Other things might take
3 substantially longer. However, that would have to be
4 Division approved, requiring a remediation plan in every
5 case if you're going to exceed the 90 days and in case
6 you're going to exceed the 90 days.

7 I would say in (2), instead: "Any
8 remediation under 19.15.29 should be completed as soon
9 as practical. Any remediation that exceeds 90 days must
10 follow the division-approved timeline within the
11 remediation plan."

12 COMMISSIONER MARTIN: All right. So you're
13 assuming that the remediation plan is calling for more
14 than 90 days?

15 COMMISSIONER BALCH: Well, that's an option
16 that they could do. It's saying if it's more than 90.
17 The goal is 90, but if it's more than 90, there has to
18 be a division-approved timeline.

19 COMMISSIONER MARTIN: I'm not sure that's
20 what that says, but I understand what you're saying.

21 COMMISSIONER BALCH: That's what I'm trying
22 to say. That eliminates the need for a variance every
23 time you want to do something that's going to be more
24 than 90 days. It can be -- remediation plan.

25 COMMISSIONER MARTIN: I see what you're

1 saying. I'm not sure the language is correct, but --

2 CHAIRWOMAN RILEY: Yeah.

3 COMMISSIONER BALCH: So my remediation that
4 exceeds 90 days must follow the division-approved
5 timeline within the remediation plan. I'm not sure if
6 that's the way to put it.

7 COMMISSIONER MARTIN: Right.

8 CHAIRWOMAN RILEY: "Outlined in the
9 remediation plan."

10 COMMISSIONER BALCH: "Given in the
11 remediation plan." You could even leave "proposed" in
12 the remediation plan, except at that point, it's not
13 proposed. It's already accepted.

14 CHAIRWOMAN RILEY: Yeah, it's accepted. I
15 think that works.

16 COMMISSIONER BALCH: "Must follow the
17 division-approved timeline of the remediation plan" --
18 "in the remediation plan."

19 COMMISSIONER MARTIN: I hear what you're
20 saying.

21 COMMISSIONER BALCH: That would certainly
22 address Mr. Price's concerns about is this just a
23 dig-and-haul?

24 CHAIRWOMAN RILEY: Right at the start, you
25 can --

1 COMMISSIONER BALCH: While still
2 encouraging everything to be done within the 90 days --

3 COMMISSIONER MARTIN: Uh-huh.

4 COMMISSIONER BALCH: -- unless there is a
5 good reason not to -- being best practice.

6 COMMISSIONER MARTIN: That's -- I didn't
7 consider it a dig-and-haul truly to begin with. So --

8 MR. BRANCARD: Perhaps we can put this
9 language in the next version we do.

10 So what is it?

11 COMMISSIONER BALCH: "Any remediation that
12 exceeds 90 days must follow the division-approved
13 timeline in the remediation plan," and you could point
14 to --

15 CHAIRWOMAN RILEY: You have to put
16 "division approved" in there.

17 COMMISSIONER BALCH: Yeah, "division
18 approved."

19 CHAIRWOMAN RILEY: Did you say that?

20 COMMISSIONER BALCH: Yeah.

21 And you can point to -- I think it's in the
22 very next section -- what has to be in the remediation
23 plan outline, if you want to, but it's right below it.

24 MR. BRANCARD: Do we want to keep the
25 "extension" sentence after that?

1 COMMISSIONER BALCH: Yeah. I think the
2 "extension" sentence is good.

3 COMMISSIONER MARTIN: Yeah.

4 COMMISSIONER BALCH: Good catch. Things
5 happen --

6 MR. BRANCARD: Uh-huh.

7 COMMISSIONER BALCH: -- to the best laid
8 plans.

9 CHAIRWOMAN RILEY: Uh-huh.

10 COMMISSIONER BALCH: Good catch. We were
11 going to have to go back to that eventually -- on
12 circularity.

13 CHAIRWOMAN RILEY: Well, I knew it was
14 because I couldn't make heads or tails.

15 COMMISSIONER BALCH: Usually you can tell
16 that there is something bad logically when the people in
17 the audience are sitting on their hands going like this
18 (demonstrating).

19 CHAIRWOMAN RILEY: Okay. What's next? Any
20 other outstanding pieces?

21 COMMISSIONER BALCH: Well, we've gone
22 through the whole thing once. I think -- I don't think
23 we found anything that we didn't have consensus on.

24 COMMISSIONER MARTIN: I don't think so.

25 CHAIRWOMAN RILEY: We tabled something --

1 did we get back to it? -- in the very beginning. It was
2 wellstream.

3 COMMISSIONER BALCH: Wellstream.

4 CHAIRWOMAN RILEY: Did we get comfortable
5 with wellstream? We did, didn't we?

6 COMMISSIONER BALCH: I think we did.

7 COMMISSIONER MARTIN: So we'll leave that?

8 CHAIRWOMAN RILEY: Yeah.

9 COMMISSIONER BALCH: We talked about it for
10 half an hour.

11 CHAIRWOMAN RILEY: I just know I wrote
12 "table" on something.

13 COMMISSIONER BALCH: So probably we need to
14 get a new version and look at it again. So I'm
15 wondering if we want to do that before we start to talk
16 about what the order should look like, because we've
17 already talked about one item that needs to be in there,
18 the modification of the C-145.

19 CHAIRWOMAN RILEY: And likely the
20 modification of the C-141.

21 COMMISSIONER BALCH: And the C-141.

22 CHAIRWOMAN RILEY: To capture some of
23 these --

24 COMMISSIONER BALCH: Do you plan on writing
25 all the findings yourself, or are you going to ask for

1 assistance?

2 MR. BRANCARD: I was thinking of doing it
3 myself.

4 COMMISSIONER BALCH: Okay.

5 MR. BRANCARD: We have a meeting on June
6 21st, and I think I can get the order in advance of
7 that.

8 COMMISSIONER BALCH: Great.

9 COMMISSIONER MARTIN: Yes.

10 COMMISSIONER BALCH: It jumped around quite
11 a bit, but it ended up on the 21st, that particular
12 meeting. We started on the 26th, and then jumped to the
13 25th and then back to the 21st.

14 MR. BRANCARD: I think we have one hearing
15 scheduled for that date.

16 COMMISSIONER BALCH: I know it's not a lot
17 of time. Would you be able to make some sort of an
18 outline of what you think might be in that order in the
19 relatively near term that we can review before we close
20 the case?

21 MR. BRANCARD: Well, you know, I just did
22 the order on the horizontal well rule. And I start with
23 summarizing the proceedings and then do sort of a
24 summary of who testified and briefly what they said, and
25 then sort of try to go through the rule proposal sort of

1 section by section, generally, and then if there are
2 sort of areas that require greater discussion -- and
3 there were a number of those in the horizontal well
4 rule -- I had separate paragraphs discussing those,
5 particularly if there were sort of back-and-forth
6 arguments of those.

7 COMMISSIONER BALCH: And there were also
8 deliberations. Do you need access to the record for
9 some of that, for your findings.

10 MR. BRANCARD: I'll use my notes because I
11 don't know when we would get the transcript. If we want
12 the order by the meeting on the 21st, we won't have the
13 transcript. I mean, I take pretty detailed notes, so I
14 don't think that's a problem.

15 COMMISSIONER BALCH: Well, I think we ought
16 to look at it one more time before we break and go to
17 the order on the 21st. I mean, we could do it first
18 thing tomorrow morning. Would that give you plenty of
19 time to put it together?

20 MR. BRANCARD: Well, what would you like to
21 see in the rule? I mean, I can -- I can accept a lot of
22 the changes that you agreed to.

23 COMMISSIONER MARTIN: So you can highlight
24 them?

25 MR. BRANCARD: But highlight them.

1 COMMISSIONER MARTIN: If you don't mind.

2 MR. BRANCARD: Do you want to keep the
3 highlighting in?

4 COMMISSIONER MARTIN: Not the old
5 highlighting but the new.

6 MR. BRANCARD: The new things --

7 COMMISSIONER BALCH: The things we've
8 changed.

9 MR. BRANCARD: That we've changed. Okay.
10 I like that.

11 COMMISSIONER BALCH: Yeah. That way we can
12 review our -- our thought process if we need to and make
13 sure all the language is correct and everybody's happy
14 with the intent before you go to the order.

15 MR. BRANCARD: Okay. I can have that back
16 to you by, say, 4:00.

17 COMMISSIONER MARTIN: I'd like to try to
18 finish up today, again, so Florene can --

19 CHAIRWOMAN RILEY: Yeah.

20 MR. BRANCARD: She's making me do the
21 minutes of the meeting now (laughter).

22 COMMISSIONER MARTIN: She had a choice to
23 go to Ireland or sit here. She chose Ireland.

24 (Laughter.)

25 MR. BRANCARD: I don't understand it.

1 CHAIRWOMAN RILEY: Yeah. That would be
2 great if we could conclude today because I don't think
3 it would take us a lot of time to run through it one
4 more time, make sure it's clean.

5 COMMISSIONER BALCH: Probably not.

6 MR. BRANCARD: I'll go clean this up and --
7 I don't know -- 3:30, 4:00.

8 COMMISSIONER BALCH: When do you think?

9 MR. BRANCARD: Probably 3:30.

10 COMMISSIONER BALCH: 3:30.

11 Recess until 3:30.

12 (Recess, 2:00 p.m. to 3:35 p.m.)

13 CHAIRWOMAN RILEY: Starting on page 1,
14 there weren't any changes here.

15 Going to page 2, under "Site
16 Stabilization," which is 29.8.(B)(3), we changed the
17 word "product" to "material."

18 COMMISSIONER BALCH: I still like that
19 change.

20 CHAIRWOMAN RILEY: I do.

21 Moving on down, we changed "materials" from
22 "products" and added Subsection E of 29.15, 29.12. That
23 looks good.

24 COMMISSIONER BALCH: 12. Section E is
25 closure reporting. Yup.

1 CHAIRWOMAN RILEY: Okay. Page 3, we
2 changed the wording in Subparagraph 4, at the top,
3 29.11, Subparagraph 4 to say --

4 COMMISSIONER BALCH: "Half mile of any
5 horizontal boundary of the release."

6 COMMISSIONER MARTIN: As opposed to?

7 COMMISSIONER BALCH: "Half mile of the
8 horizontal extent."

9 CHAIRWOMAN RILEY: Yes. Okay.

10 Moving down to (5)(b), we changed the
11 language on the last sentence to read, "The operator
12 shall use one or more of the following soil sampling
13 methods," taking out "may" and adding "one or more of."
14 I like it.

15 COMMISSIONER BALCH: Section 5 is "any
16 division-approved method." So that catches everything.

17 CHAIRWOMAN RILEY: Okay. Turning to page
18 4, this is the big one. We divide the 29.12B into two
19 subparagraphs, (1) and (1), completely removing the
20 language -- original language and reworking it. So
21 everybody take a read.

22 COMMISSIONER BALCH: Just for
23 clarification, Bill, are we allowed to not have any text
24 in B and then have the (1) and (2)?

25 MR. BRANCARD: I don't know. I'm not

1 exactly sure. We might need a title.

2 COMMISSIONER BALCH: This would be
3 "Remediation Requirements" or something like that.

4 CHAIRWOMAN RILEY: Yeah. I like that.

5 COMMISSIONER BALCH: So title B.

6 CHAIRWOMAN RILEY: Uh-huh.

7 COMMISSIONER BALCH: I still like (2).

8 CHAIRWOMAN RILEY: I like it.

9 COMMISSIONER BALCH: B is much more clear
10 now.

11 CHAIRWOMAN RILEY: You good?

12 COMMISSIONER MARTIN: Sure. I'm good.

13 CHAIRWOMAN RILEY: So paragraph C.(2) has
14 some changes. We added "or applicable remediation
15 standards." We added "written approval," which I think
16 is good.

17 COMMISSIONER BALCH: "Written approval,"
18 yeah.

19 CHAIRWOMAN RILEY: Everybody is good on
20 both of those.

21 And paragraph (3), same thing, "or other
22 application remediation standards."

23 COMMISSIONER BALCH: That's fine.

24 CHAIRWOMAN RILEY: You good, Ed?

25 COMMISSIONER MARTIN: Yeah.

1 CHAIRWOMAN RILEY: Page 5, under "Closure
2 Requirements," D.(1), we added "or other applicable
3 constituents."

4 I'm good with that.

5 COMMISSIONER MARTIN: Me, too.

6 COMMISSIONER BALCH: I wonder if we want to
7 clarify that a little bit, say "other constituents from
8 other applicable remediation standards" or "constituents
9 from other applicable remediation standards." Or it may
10 be an "and/or." My concern about leaving that -- that's
11 the intent, right? If there is another risk standard
12 that applies, like RCRA or something like that, you
13 would have to also follow those. If we leave D.(1) the
14 way it is right now or "or other constituents," somebody
15 might just make a list of the constituents they want to
16 have checked. So I would say, "Constituents from other
17 applicable standards" -- "and/or constituents from other
18 applicable standards."

19 COMMISSIONER MARTIN: Okay. I'm okay with
20 that.

21 COMMISSIONER BALCH: Did you catch that?

22 MR. BRANCARD: Yeah.

23 COMMISSIONER BALCH: I think it just makes
24 it clear what other applicable constituents are.

25 MR. BRANCARD: Uh-huh.

1 Okay. So Table 1, I wasn't sure whether
2 you wanted something else in here.

3 COMMISSIONER BALCH: Yeah, I do.

4 MR. BRANCARD: Did you want a -- did you
5 say something about minimum?

6 COMMISSIONER BALCH: Let's see. Yes. So
7 it should be "minimum depth below any point within the
8 horizontal boundary of the release from the groundwater
9 less than 10,000." "Minimum depth."

10 COMMISSIONER MARTIN: That's what you have,
11 right?

12 COMMISSIONER BALCH: Yeah.

13 MR. BRANCARD: I didn't know if you had
14 "minimum" in there.

15 COMMISSIONER BALCH: It's not in there
16 right now.

17 COMMISSIONER MARTIN: I don't think that
18 "minimum" buys you anything.

19 COMMISSIONER BALCH: Yeah, it does. So if
20 you have a sloping water table --

21 COMMISSIONER MARTIN: But if the surface is
22 sloping, it's still a surface sloping --

23 COMMISSIONER BALCH: The surface of the
24 water table -- the water table is sloping or ponding, or
25 if you're near a drainage, the water that's close to the

1 ground near the river and it goes down, away from the
2 river. So anyplace where that spill is, you want to
3 find the closest place underneath the horizontal
4 boundary of that spill, anyplace underneath that entire
5 release where you find the shallowest depth, and that's
6 what's applicable.

7 COMMISSIONER MARTIN: Okay. I don't think
8 that solves it, but that's okay.

9 COMMISSIONER BALCH: I think it does. Say
10 "minimum."

11 MR. BRANCARD: "Minimum depth." Then?

12 COMMISSIONER BALCH: Put a "the" in front
13 of "release" just to make it flow a little better.

14 MR. BRANCARD: Okay.

15 CHAIRWOMAN RILEY: Page 7. We added "or
16 final land use" to Subparagraph A.

17 COMMISSIONER BALCH: I like it.

18 COMMISSIONER MARTIN: I'm good with that.

19 CHAIRWOMAN RILEY: Okay. And then that
20 takes us to "Enforcement," and we added "pursuant to
21 19.15.5.10 NMAC."

22 COMMISSIONER MARTIN: I'm good with that.

23 CHAIRWOMAN RILEY: Okay. And then we
24 added -- or changed that back to "director or director's
25 designee" to match the language in the existing wells.

1 COMMISSIONER MARTIN: 14.4 or something
2 like that.

3 CHAIRWOMAN RILEY: Uh-huh.

4 COMMISSIONER BALCH: Well, it didn't change
5 all that much.

6 CHAIRWOMAN RILEY: Uh-uh. No. But what we
7 did change was very important stuff.

8 COMMISSIONER BALCH: Just the important
9 stuff.

10 CHAIRWOMAN RILEY: So just had a couple of
11 other little minor changes that I think could be
12 captured with the next draft that we review at our next
13 meeting.

14 Would that be appropriate, Mr. Brancard?

15 MR. BRANCARD: I would intend that at the
16 next meeting, there would be a clean draft.

17 COMMISSIONER BALCH: In the final form?

18 MR. BRANCARD: Close to.

19 COMMISSIONER BALCH: I mean, we can -- it
20 has to be proofread. We can individually review the
21 draft as long as we don't discuss it amongst ourselves.

22 MR. BRANCARD: Sure. I will send it out in
23 abeyance.

24 CHAIRWOMAN RILEY: The order?

25 MR. BRANCARD: And the order I will get out

1 in abeyance and set on the agenda for the June 21st
2 meeting.

3 COMMISSIONER BALCH: Sounds great.

4 COMMISSIONER MARTIN: Yeah.

5 CHAIRWOMAN RILEY: All right. June 21st.

6 So that completes deliberations for Title
7 19, Chapter 15, Part 29.

8 We'll continue the matter until June 21st
9 where we'll look at the final version of this rule, as
10 well as an order and consider it for approval.

11 So going back to our agenda for the
12 meeting, do we have any other business that needs to be
13 discussed at this meeting?

14 MR. BRANCARD: No.

15 COMMISSIONER MARTIN: I do not.

16 COMMISSIONER BALCH: Nothing here.

17 CHAIRWOMAN RILEY: I do not.

18 So we can adjourn if I have a motion to
19 adjourn today's meeting.

20 COMMISSIONER BALCH: So moved.

21 COMMISSIONER MARTIN: So seconded.

22 COMMISSIONER BALCH: Third over there
23 from -- (laughter).

24 CHAIRWOMAN RILEY: Thank you, everybody.

25 It didn't take as long as we thought it would.

(The proceedings conclude, 3:47 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 11th day of July 2018.

21

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