

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

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

CASE NOS: 21528

APPLICATION OF OIL CONSERVATION DIVISION
TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC, AND
TO AMEND 19.15.7 NMAC, 19.15.18 NMAC, AND
19.15.19 NMAC; STATEWIDE.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDING
RULEMAKING HEARING
DELIBERATIONS VOLUME 2
February 12, 2021
Via Webex Platform
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
FELICIA ORTH: Hearing Examiner
CHRIS MOANDER, ESQ.

This matter came on for deliberations before the
New Mexico Oil Conservation Commission on February 12, 2021,
via Webex Virtual Platform, hosted by New Mexico Energy,
Minerals, and Natural Resources Department.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241

1 APPEARANCES

2 FOR THE APPLICANT:

3 ERIC AMES
Assistant General Counsel
4 1220 S. St. Francis Drive
Santa Fe, NM 87505

5
6 FOR NMOGA:

7 MICHAEL FELDEWERT
ADAM RANKIN
8 HOLLAND & HART
110 North Guadalupe, Suite 1
9 Santa Fe, NM 87501
505-954-7286

10

FOR ENVIRONMENTAL DEFENSE FUND:

11

ELIZABETH PARANHOS
12 DELONE LAW, INC.
155 Jennine Place
13 Boulder, CO 80304
303-442-0610

14

FOR CENTER FOR CIVIC POLICY,
15 CONSERVATION VOTERS NEW MEXICO,
DINE C.A.R.E., EARTHWORKS, NATURAL
16 RESOURCES DEFENSE COUNCIL, SAN JUAN
CITIZENS ALLIANCE, SIERRA CLUB, and
17 350 NEW MEXICO:

18 TANNIS FOX
ERIK-SCHLENKER-GOODRICH
19 WESTERN ENVIRONMENTAL LAW CENTER
208 Paseo Del Pueblo Sur, 602
20 Taos, NM 87571
505-629-0732

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22 INDEX

23 Case Called

24 Reporter Certificate

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1 CHAIRWOMAN SANDOVAL: Good morning, everybody.
2 It is 9:05 on Friday, February 12, 2021, and today is the
3 second part to consider rulemaking proposals from the OCD on
4 Part 27, our new proposed Part 27, and Part 28 rules
5 modification and a couple of other OCD rules.

6 I'm Adrienne Sandoval. I am chair of the Oil
7 Conservation Commission and director of the Oil Conservation
8 Division. Also with me are the two other Commissioners. If
9 you could please introduce yourselves for the record.

10 COMMISSIONER KESSLER: Good morning. This is
11 Jordan Kessler (unclear) Mineral Resources for the New
12 Mexico State Land Office.

13 COMMISSIONER ENGLER: Also good morning. This is
14 Tom Engler, and I'm designate from the secretary.

15 CHAIRWOMAN SANDOVAL: Also with us virtually is
16 Felicia Orth who is designated as a Hearing Officer for this
17 proceeding; Florene Davidson, clerk to the Commission, and
18 Chris Moander, counsel to the Commission.

19 And with that, I think we will just dive right
20 in.

21 All right. So yesterday we concluded the
22 majority of 27.7 -- I'm sorry -- 27.8 Part (d) and almost
23 completed the 27.8 Part (e) except for addressing the new
24 proposed Part (h), so it would be 28(B) -- sorry --
25 28(D)(4)(h) as proposed by NMOGA.

1 This is a question. Can you guys hear that
2 horrible buzzing in the background, or no? It's not coming
3 through to you guys?

4 HEARING OFFICER ORTH: I don't hear a buzzing.

5 CHAIRWOMAN SANDOVAL: Okay, great. That's just a
6 joy for us to deal with then.

7 All right. Well, let's pick up in 27 Part -- .8
8 -- oh, my gosh -- (D)(4)(h) of proposed by NMOGA draft.

9 So originally their proposal was to exempt
10 (unclear) emissions components such as valves, flanges or
11 connectors from the prohibition on venting and flaring --
12 well, these components don't flare, but from venting. I
13 think there was quite a bit of testimony that that actually
14 could create a pretty large loophole within the rule, and so
15 it appears that they have come back with updated proposals.

16 MR. MOANDER: Madam Chair, I apologize for
17 interrupting. Can you give me the sharing privileges so I
18 can get the rule up for everyone to look at, please?

19 CHAIRWOMAN SANDOVAL: Yes, sorry. You should be
20 getting it now. Right. If you could make it a smidge
21 bigger again.

22 MR. MOANDER: Does that work?

23 CHAIRWOMAN SANDOVAL: That's fine. Thank you.

24 MR. MOANDER: I keep hitting the space bar, and
25 I'm not in the application so I'm messing up my format.

1 But, all right, good.

2 CHAIRWOMAN SANDOVAL: All right. So I'm just
3 going to pull up some of the testimony. Mr. Rynerman talked
4 about this -- he was predominantly the one. Mr. Smitherman
5 talked about it a little bit in the questions I think from
6 me.

7 Let's see, Mr. Rynerman, I believe, was on -- I
8 think before I -- I think before I even go to the
9 transcript, or as I'm going to the transcript, I think
10 ultimately the issue that they mentioned valves as part of
11 normal operation can have like a low level amount of
12 leakage, I guess you could term it.

13 There are levels within environmental
14 regulations. I think the proposal from NMED is a leak above
15 500 PCM, would it be considered a leak. And I believe that
16 comports with EPA rules.

17 Is there -- but there was a line of questioning
18 from myself to Mr. Rynerman if it would be prudent and
19 should be reasonable if operators should install low
20 emission valves instead of traditional, you know, valves as
21 they move forward in operations, and I believe he said yes.

22 So with that, I almost see this somewhat in the
23 piece -- I guess somewhat in the same context of our
24 pneumatics conversation, going forward, if you can install
25 low emission valves, that's probably what you should be

1 doing, and it might be waste if you don't.

2 Now for all the valves, flanges, connectors,
3 blah, blah, blah, that are already out there, there is a
4 difference, but what we have to figure out is what the
5 normal operations are of those as opposed to a leaking
6 component, which is -- which is, in my mind, waste.

7 I think the argument was it's not waste. But the
8 way I see it, it's very similar to a thief hatch in the
9 sense that, if that component was not leaking, that gas
10 would still be in the pipeline and within the system. It is
11 unnecessary and excessive for it to be leaking out of the
12 pipeline because -- or out of the flange, connector, valve,
13 whatever -- because there is a leak -- because there some
14 sort of maintenance issue.

15 I'm not implying that it is negligence. If the
16 valve is leaking unfortunately it's part of normal
17 operations, it could be a part of normal operations, but if
18 that's not fixed --

19 COMMISSIONER KESSLER: They have this language
20 normal (unclear). So I don't know what, I don't know what
21 an example of a leak that's not --

22 REPORTER: Commissioner Kessler, speak up please.

23 COMMISSIONER KESSLER: I don't know what -- I was
24 asking the Director if she knew or if Dr. Engler knows what
25 a normal unintentional leak could be the result of the

1 (unclear).

2 CHAIRWOMAN SANDOVAL: I think it could be almost
3 everything. I don't think that operations, one, if have you
4 a leak out of a flange or a connector or a valve, I don't
5 think, one, you ever intend for it to leak. So it's never,
6 in my mind, intentional. I can't imagine a world where an
7 operator would say, "Yeah, I want it to leak out of here."

8 Two, I don't think that the normal unintentional
9 leaks that are not the result of adequate design or
10 maintenance, I mean, a facility could be designed perfectly
11 adequate, and after all -- and you can still have connectors
12 or something that are going to leak, and maybe it was faulty
13 from the get-go, maybe it's because there is too much
14 vibration, maybe there are a lot of different pieces, but I
15 actually think that just about each and every sort of leak
16 out of the system could be classified as an unintentional
17 leak that was not due to inadequate equipment design or
18 maintenance, which then in mind means any leaking component
19 you have out there is now excessive.

20 I think does not comport with sort of the
21 definition of surface waste, because again if that component
22 were adequately -- or were -- if that component were not
23 leaking, then that gas would still be within the process
24 flow, and it could be moving along to sales lines. You
25 know, depending on where that component is, I think we could

1 get really -- it could be really tough if we wanted to say,
2 well, this component is X, Y and Z, but we have to decide
3 one thing.

4 COMMISSIONER KESSLER: So in that sense it would
5 be excessive under the definition (unclear) but not for the
6 fact it (unclear) it would be fine.

7 CHAIRWOMAN SANDOVAL: Yes. In my mind, yes,
8 absolutely. And Mr. Rynerman said as such during the
9 testimony.

10 COMMISSIONER KESSLER: Okay.

11 CHAIRWOMAN SANDOVAL: So I, there is a piece of
12 me that's trying to understand what they are trying to
13 capture here, but this language absolutely does not do it
14 for me, nor did the previous language. I'm not sure what
15 that language should like look. I also wonder if we put it
16 in the parking lot under performance standard about as you
17 are (unclear) using whatever the best available design
18 standard or whatever for your action.

19 COMMISSIONER KESSLER: I support the performance
20 standards, really -- I mean I can understand -- I can
21 understand the intention behind NMOGA's proposal (unclear)
22 I'm wondering if there's just a tighter way to do it, but
23 perhaps not.

24 CHAIRWOMAN SANDOVAL: I wonder if it would be
25 something like normal -- I guess we could tie it to some

1 sort of the structure specification because in general there
2 should -- should be specs on that, but we didn't really get
3 any testimony on that, in particular. We did get testimony
4 on thief valves and things like that, performance standards,
5 but I don't -- I don't know how -- Dr. Engler, do you want
6 to --

7 COMMISSIONER ENGLER: I would like -- can you
8 repeat NMOGA'S proposal.

9 CHAIRWOMAN SANDOVAL: They want it to say normal
10 unintentional leaks that are not (unclear) adequate
11 equipment design or maintenance. And then the explanation
12 says, NMOGA proposes this language to replace emission
13 components such as valves, flanges or connectors.

14 COMMISSIONER ENGLER: This if it's a leak and
15 it's not due to design or normal operations, is that
16 categorized as a malfunction?

17 CHAIRWOMAN SANDOVAL: Say it again.

18 COMMISSIONER ENGLER: If it's not as a result of
19 design and normal operations then would that be classified
20 as a malfunction?

21 CHAIRWOMAN SANDOVAL: I see where you are going.
22 So if a valve is leaking or flange or whatever, because of
23 whatever reason, I don't -- again, I don't think it's ever
24 intentional (unclear).

25 COMMISSIONER ENGLER: This is definition. And

1 then.

2 CHAIRWOMAN SANDOVAL: This is not --

3 COMMISSIONER ENGLER: This is under -- so at some
4 point, if you are going to put this under venting and
5 flaring during production operations, so if it's here, it
6 needs to then also follow through as to how do you handle it
7 in reporting and --

8 CHAIRWOMAN SANDOVAL: So if we go back and look
9 at the malfunction definition, I am not sure it would fall
10 under malfunction, to be honest. Malfunctioning, a sudden,
11 unavoidable failure or breakdown of equipment beyond the
12 reasonable control of the operator that substantially
13 disrupts operation, but does not include a failure or
14 breakdown entirely or in part by poor maintenance, careless
15 operation or other preventable equipment failure or
16 breakdown.

17 I think it would fit in there if there was not
18 the term, that substantially distracts operation. The
19 leaking component may very well go unnoticed and not
20 substantially disrupt operations.

21 COMMISSIONER ENGLER: So would it be under
22 routine repair and maintenance?

23 CHAIRWOMAN SANDOVAL: Is that one of your
24 (unclear).

25 COMMISSIONER ENGLER: Yeah, yes. 2(c), under

1 (G)(2)(c).

2 CHAIRWOMAN SANDOVAL: There would have to be some
3 clarification in there. We will have to add some sort of
4 language in there (unclear) repair and maintenance including
5 blowdown (unclear) and leaking components, leaking fugitive
6 components. But then my concern is there is not a
7 definition for fugitive components. There are in EPA-type
8 rules.

9 COMMISSIONER KESSLER: (unclear).

10 COMMISSIONER ENGLER: Actually, I have no problem
11 with the fugitive request by NMOGA. I think that's
12 reasonable, in my mind. I think the part here is the next
13 step is how do you include it in your lost volume or do you
14 or does it (unclear) pneumatics?

15 CHAIRWOMAN SANDOVAL: So I agree, but I don't. I
16 agree that there are questions reasonable. The way it's
17 written is not. The way it is written is a line that
18 follows the, I think, the entire intent of the rule. It's
19 written that normal unintentional leak, it doesn't talk
20 anywhere about fugitive emission components, just leaks from
21 any place, that are not the result of inadequate equipment
22 design or maintenance. That is just about everything. So
23 that language, in my mind, is atrocious.

24 COMMISSIONER ENGLER: Well, tighten it up.

25 CHAIRWOMAN SANDOVAL: That's what I can't figure

1 out. I'm not opposed to -- I understand the request. The
2 first shot at it was not good. The second shot is even
3 worse. So we are left to try to figure out, pick up the
4 pieces of their failures here.

5 COMMISSIONER KESSLER: Well, we have a definition
6 of fugitive emissions, fugitive emissions and components,
7 and how their (unclear) so fugitive emission component such
8 as valves, flanges and connectors.

9 CHAIRWOMAN SANDOVAL: I think (unclear) normal
10 operations with fugitive emission components as specified by
11 the manufacturer?

12 COMMISSIONER KESSLER: Makes sense to me.

13 MR. MOANDER: Where do we have support from any
14 manufacturer specifications in the record? Because there
15 are is a specific, and I want to make sure we know what's in
16 the record concerning that. I don't recall anything.

17 CHAIRWOMAN SANDOVAL: I any Mr. Rynerman talked
18 about it. I will have to pull it up.

19 COMMISSIONER KESSLER: Was it -- I mean, this
20 looks like --

21 CHAIRWOMAN SANDOVAL: I'm sorry, it was the 6th
22 day. It was like the 11th. We have it -- we have
23 (unclear).

24 COMMISSIONER ENGLER: So if we allow normal
25 operations (unclear) don't put in there about specs or

1 manufacturer specs, then for the fugitive emissions we could
2 say normal operations of valve, flanges, so why do we not
3 put that spec in when we don't with the others (unclear)?

4 COMMISSIONER KESSLER: I think we are looking for
5 ways that cover directly the concerns about the proposed
6 rule, so we are looking for ways that we can tighten that
7 language so that it's not just any time a flange leaks for
8 whoever reason.

9 COMMISSIONER ENGLER: I agree, but we have the
10 same as all of the other components. They are not sitting
11 there (unclear). I think the wording is -- we are trying
12 to -- normal operations, in this case, the valve flange is
13 (unclear).

14 CHAIRWOMAN SANDOVAL: I think we are okay with
15 that. I would actually (unclear) looking back at the
16 original language. I -- I have a concern that if we say
17 normal operations of the fugitive emission components such
18 as valve, flanges, connectors, that that's not -- again, we
19 don't have a definition of fugitive emissions to put in. So
20 can we not just say normal operations without saying valves,
21 flanges, connectors.

22 I'm afraid it's not an all-inclusive list, and
23 later on operators are going to go, oh, well, this is a
24 fugitive (unclear) I think a thief hatch is a fugitive
25 emission component. It's like a laundry list of 30 items.

1 I don't want that to get brought into this rule. I think it
2 complicates things.

3 COMMISSIONER KESSLER: If we don't have the
4 definition of (unclear) then perhaps we should leave it at
5 valves, flanges or connectors, which is, if nothing else, a
6 good start. If the rule needs to be changed down the road,
7 then that's something that's, you know, a year or two years
8 from now the Division finds appropriate (unclear) but so the
9 equipment listed in this for one set standard and practice
10 definition, that would be an option.

11 But if we just have valves, flanges or
12 connectors, I think that that is a reasonable, based on the
13 testimony it's a reasonable subset or start if not
14 comprehensive that addresses the concerns that the NMOGA
15 raises for their (unclear).

16 COMMISSIONER ENGLER: And I can agree with
17 Commissioner Kessler's approach on this and how she is
18 reading it, such as valves, flanges or connectors language.
19 It gives at least some categories, even if it's not an
20 exhaustive list. That's useful for interpretation purposes.

21 CHAIRWOMAN SANDOVAL: So your proposed language
22 would be, normal operations with valves, flanges and
23 connectors?

24 COMMISSIONER KESSLER: I agree. Dr. Engler, what
25 do you think about that?

1 COMMISSIONER ENGLER: Very good.

2 MR. MOANDER: Could I get a repeat of that
3 language again? I apologize.

4 CHAIRWOMAN SANDOVAL: Say normal operations of
5 valves, flanges and connectors.

6 COMMISSIONER ENGLER: Components such as. Do you
7 want that such as in there?

8 CHAIRWOMAN SANDOVAL: No, I don't.

9 COMMISSIONER ENGLER: Mr. Moander, that's
10 (unclear).

11 MR. MOANDER: So using language like such as,
12 what that does is that indicates that any item would fall
13 under this particular provision if similar to, related to,
14 akin to these categories, so it would -- it would present a
15 limitation to how expansive the language can be, but it also
16 gets some categories. So such as language seems reasonable
17 here, because if that language isn't in there, then it's
18 specifically going to be just valves, flanges and
19 connectors.

20 COMMISSIONER KESSLER: That's what the director
21 wants, though.

22 CHAIRWOMAN SANDOVAL: I don't think that -- I'm
23 trying to walk through the -- I'm trying to look at the --
24 I don't see them talking about really any other things other
25 than those valves, flanges and connectors. And if they

1 wanted to put that in, it should have been in the testimony.

2 MR. MOANDER: That is also a reasonable
3 interpretation. Now, it sounds like you want to avoid --

4 CHAIRWOMAN SANDOVAL: I want to avoid like the
5 open-endedness.

6 MR. MOANDER: Okay. So you want to curve the
7 flexibility and be more precise here, and if that's the
8 case, then the such as or including would not be appropriate
9 to achieve that end.

10 COMMISSIONER KESSLER: Yes. I think the language
11 that the Director had proposed was normal operations of
12 valves, flanges, or connectors, and I would add, that are
13 not the result of inadequate equipment design or
14 maintenance.

15 CHAIRWOMAN SANDOVAL: I'm fine with that.

16 COMMISSIONER KESSLER: Kind of an extra -- extra
17 sidebar.

18 CHAIRWOMAN SANDOVAL: Dr. Engler?

19 COMMISSIONER ENGLER: Good.

20 CHAIRWOMAN SANDOVAL: I just want to bring this
21 up, too. I'm looking at the transcript. There are two
22 places, it looks like there are places that there are
23 disagreements within the transcript on whether or not a
24 leaking component would be surface waste.

25 So under my (unclear) Mr. Rynerman says, "Yes,

1 that seems like it should. If the valve was not leaking it
2 would still be in the process and therefore is counted as
3 surface waste."

4 And then Mr. Feldewert leads him down another
5 path and there is some disagreement, but I actually
6 disagreed with that. Again, you know, let me read one of
7 the pages to you. I just want to make sure for the record
8 we are all on the same page here.

9 All right. So Mr. Feldewert just reminds him
10 what the definition of surface waste is. He was talking
11 about -- let's see -- trying to do this without reading the
12 six pages of testimony here.

13 So Mr. Feldewert says, Ms. Sandoval was
14 discussing about fugitive losses occurring.

15 And she said, in the process.

16 Yes.

17 He was asked he remembered that.

18 He said yes.

19 And he said per the process.

20 When you say in the process, are you (unclear)
21 the sales point?

22 And he said (unclear). I was thinking about like
23 a hydration unit -- I think it says ambien but it means
24 amine -- not necessarily the process of moving gas from our
25 meter to where it access our system. I wasn't thinking

1 (unclear).

2 Mr. Feldewert says, okay, that's what I wanted to
3 make sure of. When you look at the process of moving the
4 gas from a wellhead to the sales point, does that process
5 Mr. Rynerman, include -- I'm sorry, does that include
6 unavoidable losses?

7 And he said yes.

8 It talks about pieces of the midstream,
9 unavoidable losses, repair and maintenance, normal operation
10 of the pneumatic controllers, blah, blah, blah.

11 Let's see. I'm trying to get the -- and when you
12 look at low pressure emissions from flanges, valves,
13 connectors which was the subject of your discussion with Ms.
14 Sandoval, which again I think aligns with there was no real
15 other discussion other than flanges, valves and connectors,
16 so we don't have anything on the transcript to go outside of
17 that.

18 And with your discussion, okay, he wants to
19 rephrase. When you look at normal operations of flanges,
20 valves, connectors, what you and NMOGA call fugitive
21 emissions, are those circumstances unavoidable low pressure
22 emissions.

23 And he says yes.

24 Are they recognized, for example, by other
25 agencies as unavoidable low pressure emissions?

1 And he says yes.

2 When you look at the legal definition of surface
3 waste and apply your engineering expertise to those types of
4 emissions to that definition, do those types of low pressure
5 emissions constitute surface waste?

6 Mr. Rynerman says, I do not believe so because,
7 first of all, it creates unnecessary and they are not
8 unnecessary, but basically as part of a flange or valve,
9 especially a valve, that potentially leak. So it's not
10 necessarily unnecessary, but it's accepted and it is not
11 considered to be excessive if that leak is less than the
12 prescribed leak rate. And so I'm having a hard time calling
13 it excessive surface loss accepted by NMED or EPA under a
14 different program.

15 I think, I just wanted to make sure that we all
16 sort of had that testimony in our minds, but I still, from
17 my perspective, if we're allowing -- so I think what we are
18 doing right now is very similar to what we did (unclear)
19 we're allowing the normal operation of the fugitive emission
20 components which recognize there may be a low level of some
21 sort of venting off of these as part of the normal
22 operation, but if they are leaking above and beyond that
23 normal operational level, then that is waste. And I think
24 that is the point of clarity here, and that aligns with what
25 we did for pneumatics.

1 COMMISSIONER KESSLER: I think a clarification,
2 this new section that we have created is not intended to
3 allow leaking beyond, as you said, normal operations, and
4 think that's what the testimony bears out.

5 If something is leaking out of a connector in
6 excess of what would be considered normal operation that is
7 not captured, by the rule it should be separately reported
8 and should be -- and is waste.

9 So let's make sure there is no confusion about
10 that. I think that this language captures that. And so I
11 would support it, yes, I agree and it's a real problem if
12 something is, you know, venting gas, and it's outside of
13 normal operation, that would be an exception that is no way
14 intended to be permitted by this.

15 CHAIRWOMAN SANDOVAL: I agree. Dr. Engler?

16 COMMISSIONER ENGLER: Let's move on.

17 CHAIRWOMAN SANDOVAL: Okay. All right. We're on
18 Section (e). I'm sorry. All right. This is performance
19 standards, and we have three things in the parking lot for
20 performance standards. So do we want to go through the
21 proposed changes as they are right now from the parties and
22 then try to add that stuff back in, and do we want to review
23 and then go over there?

24 I would advocate to review what is in the
25 proposals first and so how that lines out and then make the

1 editions.

2 COMMISSIONER ENGLER: That's good.

3 COMMISSIONER KESSLER: That sounds fine with me.

4 Just that initially we had talked about changing the title
5 of performance standards for separation and (unclear) report
6 on standards. So if there are things we discussed
7 eventually that are outside those three categories, that
8 would be wise.

9 CHAIRWOMAN SANDOVAL: I agree with that change.
10 I think that will -- we make those other changes that will
11 align the title with what it is intended to do.

12 Okay. All right, (E)(1), no changes by NMOGA. I
13 have to get to the right page. Okay, great.

14 COMMISSIONER KESSLER: I agree with the
15 Division's proposed changes to the section. I think it
16 clarifies -- I'm looking at (1) -- I think that this
17 clarifies what they are asking for and reflects the record
18 stated.

19 CHAIRWOMAN SANDOVAL: I agree it's clean. It
20 cleans up that language.

21 COMMISSIONER ENGLER: Yes. I agree.

22 CHAIRWOMAN SANDOVAL: (E)(2), no changes by
23 Climate Advocates, no changes by NMOGA. Hold on. I'm
24 sorry. I guess my only question here, I can't remember if
25 this was in testimony. Maybe Mr. Bolander talked about it,

1 but I don't understand why it's just tanks that are routed
2 to a flare and (unclear).

3 The operator of a permanent storage tank
4 associated with production operations that is routed to a
5 flare or control device installed after effective date of
6 the rule shall equip the storage tank with an automatic
7 gauging system that reduces the venting of natural gas. Why
8 only -- why with flares?

9 HEARING EXAMINER ORTH: Madam Chair, this is
10 Felicia.

11 CHAIRWOMAN SANDOVAL: Yes.

12 HEARING EXAMINER ORTH: Mr. Bolander testified
13 that although NMOGA had argued that the standard which
14 requires (unclear) to be equipped with automatic gauging
15 systems was not needed, the venting is not waste, but it's
16 feasible for new tanks, storage tanks can be controlled, but
17 venting from tanks without such gauging constitutes waste.
18 So the rule provides that manual gauging on existing tanks
19 is not waste. That's where the Division was coming from.

20 CHAIRWOMAN SANDOVAL: But I guess I don't
21 understand why the distinguishing -- and maybe this is a --
22 sort of what we talked about already, why are we
23 distinguishing controlled versus uncontrolled when in other
24 parts of the rule we sort of decided it's just tanks.

25 I recall that testimony, but I don't recall --

1 did he say anything as to why it was just tanks with flares?
2 I'm trying to look it up. Do any of the other Commissioners
3 have any thoughts on this?

4 COMMISSIONER KESSLER: I don't other than if the
5 OCD's testimony that explains (unclear) but again I don't
6 want to unintentionally make way without the different
7 portions of the rule.

8 CHAIRWOMAN SANDOVAL: Ms. Orth, can you tell me
9 what day of testimony you are looking at?

10 HEARING EXAMINER ORTH: I believe it was part of
11 Mr. Bolander's rebuttal, so it would have been towards the
12 end. I will continue looking for it.

13 CHAIRWOMAN SANDOVAL: Yeah, it would have been
14 the last day. I thought I asked a specific question about
15 this, but maybe I didn't. Maybe I did in my mind.

16 MR. MOANDER: From a consistency standpoint it
17 looks like we removed the routed flare or control device in
18 (D)(4), (D)(4)(e). That was discussed quite a bit
19 yesterday, and while I don't profess to know the technical
20 side of this case as well as I would like, this does appear
21 again in the rule, this particular phrase down here in --
22 let's see, (G)(2)(j) per the reporting.

23 CHAIRWOMAN SANDOVAL: I think in the reporting
24 you were going to make it just tanks in general and that was
25 part of the conversation.

1 MR. MOANDER: Right. So in this instance, for
2 consistency, I mean, you know, this may not -- the language
3 we are talking about here, (E)(2), if it's going to be
4 removed elsewhere, perhaps it needs to be removed here. But
5 I want to make sure we have a basis for that in this
6 particular removal.

7 (Pause.)

8 CHAIRWOMAN SANDOVAL: I found the spot in here
9 where Mr. Bolander agrees that flaring from, quote,
10 controlled tanks should be included in waste. And it's in
11 that last day. And not -- it says --

12 HEARING EXAMINER ORTH: Page 182 there?

13 CHAIRWOMAN SANDOVAL: That was a little earlier.
14 I'm on 168. I haven't gotten there but it was earlier that
15 I saw that piece. What page are you looking at?

16 HEARING EXAMINER ORTH: I'm on 182 of Mr.
17 Bolander, and I think there is a discussion there as well.

18 CHAIRWOMAN SANDOVAL: Okay. Let me jump to that
19 page. Oh, okay. This may be it. Hold on.

20 So this is talking about the auto gauging on 181.
21 Mr. Bolander says it doesn't preclude you from proposing the
22 changes. And then he just says rise in the testimony, but I
23 think that should be routed to a flare control device. Why
24 is it just tanks that are routed to a flare control device?
25 Is that the only way it works?

1 He said, Mr. Bolander's response specifically on
2 this is, no, we were looking at it in terms of opening thief
3 hatches, you know, that tanks that were, were routed to a
4 device had more emissions that they were releasing. Tanks
5 that are not, that are basically operated under a couple of
6 ounces of pressure, pressure that is released through a
7 enardo-type valve, basically through his research saw very
8 little difference of what was released through a vent versus
9 a gauging exercise.

10 So based on that you are still going to have the
11 same emissions, so that's why we felt like the best bang for
12 your buck for installing (unclear) would be to prevent
13 (unclear) on tanks that we knew had excess flashing going
14 on.

15 So I think what he is basically saying is the
16 ones that are not routed to a control device, just it's
17 almost like neutral, it doesn't really make a huge
18 difference in terms of the waste.

19 All right. I'm comfortable with that language
20 then.

21 COMMISSIONER KESSLER: And do we need to put it
22 back in where we had taken it out before.

23 CHAIRWOMAN SANDOVAL: I don't think so because it
24 was different --

25 COMMISSIONER KESSLER: Okay, okay.

1 CHAIRWOMAN SANDOVAL: No, because we were talking
2 about thief hatches. I mean, regardless of that, venting
3 ought to be an enarado valve or the thief hatch, it's still
4 not good practice to have those thief hatches open.

5 COMMISSIONER KESSLER: Okay. Let's move forward.

6 CHAIRWOMAN SANDOVAL: All right.

7 MR. MOANDER: Just to make clear, so (E)(2) is
8 good?

9 CHAIRWOMAN SANDOVAL: It's good.

10 MR. MOANDER: Okay.

11 CHAIRWOMAN SANDOVAL: As is proposed by the
12 Division. (E)(3), NMOGA has a proposed change. They want
13 to say, instead of maximize flare combustion efficiency,
14 they want to say, ensure proper flare combustion efficiency.
15 I don't know, I guess -- and there was testimony on this by
16 OCD. I'm fine with the change to ensure proper combustion
17 efficiency. I'm fine with that. I mean I don't necessarily
18 a hundred percent agree that maximum flare combustion
19 efficiency, if I were to hear that language is a hundred
20 percent, but I can see the concerns.

21 COMMISSIONER KESSLER: Yeah, I thought maybe
22 there was testimony on that issue. So I would --

23 CHAIRWOMAN SANDOVAL: Dr. Engler?

24 COMMISSIONER ENGLER: OCD in its rebuttal states
25 the following points. One is that, you know, they're not

1 following a hundred percent destruction. They are also
2 stating that we feel like we were proper (unclear) would
3 allow such a thing. So that's why they -- they prefer --
4 that's why to maximum flare, is the question, from OCD, in
5 their testimony, it got better defined. Shows proper.

6 CHAIRWOMAN SANDOVAL: And we're using proper in
7 other places in the language. And literally, and this is in
8 the statement, it's referring to a properly sized flare.
9 That seems a little --

10 COMMISSIONER ENGLER: Either one, they're not the
11 same. But the OCD rationale (unclear) whether you use
12 properly sized to or maximum efficiency.

13 CHAIRWOMAN SANDOVAL: I mean, if I were using the
14 maximum flare combustion efficiency, I'm more thinking, you
15 know, if we are talking (unclear) For me that's 99.5. If we
16 are talking about a normal flare, maybe we are at 95, maybe
17 we are at 98. My mind never goes to a hundred. But I guess
18 I could see the concern that I my mind is not the only one
19 reading this rule, and so I'm fine with -- I'm fine with the
20 changes from NMOGA, to ensure proper, because we are using
21 proper at other places.

22 COMMISSIONER KESSLER: I think that's good. I
23 think we should keep --

24 CHAIRWOMAN SANDOVAL: So it should read, the
25 operator shall combust natural gas in the flared stack that

1 is properly sized and designed to ensure proper combustion
2 efficiency.

3 MR. MOANDER: So it's properly sized, so it was
4 like it was properly --

5 CHAIRWOMAN SANDOVAL: Yes.

6 MR. MOANDER: Okay.

7 CHAIRWOMAN SANDOVAL: Okay. It's (H)(3) if you
8 want write on there, however you want to annotate it, it's
9 stated exactly how NMOGA proposes it.

10 So (3)(a), (b) and (c), (a) there are no proposed
11 changes from any parties. (b), there are proposed changes
12 by NMOGA.

13 COMMISSIONER ENGLER: Are we going to change the
14 timing of these or just leave it?

15 CHAIRWOMAN SANDOVAL: I think that's where we are
16 right now. I actually thought that the testimony from, on
17 this aspect from (unclear) was not compelling. Basically
18 they didn't tell how many were supposed to be retrofitted,
19 they didn't have information from manufacturers. They
20 couldn't provide -- I think I asked a very specific
21 question. So if you don't know what the (unclear) is, and
22 you don't know how many need to be retrofitted, how do you
23 know (unclear)? And there was no adequate response.

24 So I think the Division's proposal of 18 months
25 makes sense. I will just -- I will note that Climate

1 Advocates want it to be six months. I think that is -- I
2 mean we did hear enough testimony, enough to know it's
3 probably not feasible at six months. So I think 18 months
4 is appropriate as proposed by the Division.

5 COMMISSIONER KESSLER: I agree.

6 COMMISSIONER ENGLER: Yes. I will also state
7 there was no evidence to support the six months, that
8 equipment was certainly available. There is no good
9 evidence for the lengthening or the shortening.

10 CHAIRWOMAN SANDOVAL: I am good with the may have
11 malfunction change. We heard testimony on that.

12 COMMISSIONER KESSLER: In the Division's
13 proposal?

14 CHAIRWOMAN SANDOVAL: Yeah. I think the
15 Division's.

16 COMMISSIONER KESSLER: It's in the Division's?

17 CHAIRWOMAN SANDOVAL: Yes, the Division in
18 (3)(b).

19 Okay. (3)(c) this is the change where we got rid
20 of the oil pieces, which was discussed during testimony,
21 which I agree with because we are looking at the gas rule.
22 I agree with the edition of facility, I think it's really
23 important because it could be something like a central tank
24 battery.

25 NMOGA had no changes, but Climate Advocates

1 proposes -- Climate Advocates proposes they have to retrofit
2 their flares within a 12 month time frame, whereas the
3 Division has it, if you replace it, then you have to make
4 sure you have it with an auto igniter.

5 I -- we did hear quite a bit of testimony on the
6 cost of these things. I have to -- I can't remember the
7 exact number, but it was not insignificant. And I would be
8 concerned about that requirement on a stripper well making
9 it an absolute. I think it should be left as in the
10 Division's proposal in (3)(c).

11 MR. MOANDER: Any other Commissioner comment on
12 that?

13 COMMISSIONER ENGLER: I agree. You know, (3)(d)
14 is the rebuttal from OCD. It's quite clear that the
15 evidence, from what they are stating, you know, that they
16 would be within their guidelines tolerable to allow
17 (unclear) the timing of that is when it happens then it
18 happens (unclear) I'm good with OCD.

19 CHAIRWOMAN SANDOVAL: This sort of ties into the
20 conversation yesterday. We got (unclear) about stripper
21 wells.

22 COMMISSIONER KESSLER: Yes, I agree with what's
23 been stated.

24 CHAIRWOMAN SANDOVAL: Okay. So it's as is the
25 Division language. (4), I am good with (4). No changes

1 from other parties.

2 COMMISSIONER ENGLER: That's good.

3 COMMISSIONER KESSLER: I like the Division's
4 (unclear).

5 CHAIRWOMAN SANDOVAL: (5), there is nothing in
6 (5) itself. No, I'm sorry, there is a proposed change.

7 All right. This is AVO. NMOGA is proposing the
8 equipment not subject to the AVO exception, the Environment
9 Department or other state, federal or tribal agency. The
10 operator shall conduct physically -- what NMOGA is trying to
11 do is say, you don't have to do AVO here if you have to do
12 it somewhere else.

13 And I think the testimony on the Division was
14 their intent is for -- their intent is that if they are is
15 some requirement by the Environment Department, that that
16 requirement can be, can be met by performing -- by
17 performing the AVO for the Environment Department. There is
18 not like a specific form. They don't -- not to say they
19 don't care, but like it's non-consequential to what the
20 format is.

21 COMMISSIONER KESSLER: Yeah, I don't think the
22 rule as drafted is duplicative because the other
23 requirement, they are not conflicting standards, I guess is
24 what I'm trying to say. But I think that in some respect
25 this can be easier as for (unclear) I think it's going to be

1 harder to have carve-outs for different agencies, and OCD
2 does have jurisdiction to require AVO (unclear). I would
3 prefer the Division's language for the AVO.

4 CHAIRWOMAN SANDOVAL: Now -- sorry, Dr. Engler?

5 COMMISSIONER ENGLER: I'm lost in this. Can you
6 explain all of that again? So all I have to do, if I have
7 AVO requirements for other agencies; is that correct?

8 CHAIRWOMAN SANDOVAL: Yes, well not for certain,
9 but they are saying if, and if there is another requirement
10 somewhere else, then you shouldn't have to do it here. And
11 the Division said is, if you are doing it somewhere else,
12 the requirements from that other agency will make the
13 Division meet.

14 COMMISSIONER ENGLER: Okay. So if they have to
15 do a specific AVO criteria for NMED, the Division will
16 accept that?

17 CHAIRWOMAN SANDOVAL: Yes. Yes.

18 COMMISSIONER ENGLER: So there is not a
19 duplication or a verbal or variety of issues, the Division
20 is saying, we will accept the other agency.

21 CHAIRWOMAN SANDOVAL: Correct. That's what the
22 Division said in their testimony. I believe it was Mr.
23 Powell who discussed that. And so I, because of that, I do
24 not agree with NMOGA's position.

25 COMMISSIONER ENGLER: What was NMOGA's?

1 CHAIRWOMAN SANDOVAL: NMOGA wants to say
2 explicitly that it does (unclear) equipment that is not
3 subject to AVO inspection by the New Mexico Environment
4 Department or other state, federal or tribal agencies.

5 Basically they are saying, you don't have to do
6 this if you are doing it for someone else. But I think
7 that's the almost inherent in if you are doing it for NMED,
8 you don't have to do something separate for OCD, it all
9 counts.

10 COMMISSIONER ENGLER: So they are saying if it's
11 not under another agency they don't want to do it?

12 CHAIRWOMAN SANDOVAL: Uh-huh. No. They are
13 saying if it's under another agency, then we shouldn't have
14 any requirement from OCD.

15 But what OCD said was, you don't even have to
16 turn these forms in, you just have to have them available
17 upon with request. So it's not like every month you have to
18 turn these forms in to OCD, it would just be if OCD were to
19 ask you for AVO documentation --

20 COMMISSIONER ENGLER: Over five years.

21 CHAIRWOMAN SANDOVAL: Yeah, if you are already
22 doing it for New Mexico Environment Department, then you
23 just turn over the documentation from them. I don't think
24 that -- I mean, I almost feel like it's (unclear) to go into
25 this as is and it's unnecessary to add that additional

1 statement of NMOGA.

2 COMMISSIONER ENGLER: Well, I like OCD as
3 explained by the Director, yes.

4 CHAIRWOMAN SANDOVAL: Okay, okay. So we agree
5 not to add the NMOGA language in (5)?

6 COMMISSIONER KESSLER: Correct.

7 CHAIRWOMAN SANDOVAL: Okay. Now, going on a
8 little bit, I think we need to probably discuss before we go
9 on, but holistically we heard testimony that it's not the
10 actual AVO -- well, it's the recordkeeping part that's hard.

11 And the operators, thus the prohibited part. And
12 then we heard testimony too that if some of this language in
13 the -- at (a)(i), visually inspecting externally for cracks,
14 holes, loose connections -- a whole laundry list -- and they
15 decided it was just walk around the site and do, you know,
16 look, see, hear.

17 COMMISSIONER KESSLER: I actually agree with that
18 because if I'm an operator and I'm going to comply with
19 this, just to set up, and set up just like a checklist for A
20 V and O, I'm going to have to have under A each of the
21 components broken out to make sure that I satisfied the
22 Division requirement.

23 And so if we -- depending on the Division's
24 intent here, I think that, what I heard the Division say is
25 that this is not -- through its testimony, this is not

1 intended to be onerous AVO, it's intended to do -- to cover
2 what, what operators really are already doing when they go
3 on site.

4 CHAIRWOMAN SANDOVAL: I think that (i), (i) and
5 three (i)'s, those were fine. It was the concern at (i).
6 And I asked, I believe it was Mr. Rynerman, if you were
7 limited to doing this exhaustive list once a month, would
8 that make it doable, and he said yes.

9 Whereas the other three weeks were just sort of
10 walk around, but I don't feel like that maybe -- it makes
11 the language complicated.

12 COMMISSIONER ENGLER: I think OCD's decision to
13 add the word external was appropriate to be able to clarify
14 what the -- because there was some discussion about opening
15 up and looking at things, that was not the intent.

16 CHAIRWOMAN SANDOVAL: Right.

17 COMMISSIONER ENGLER: So I think officially it is
18 external that is the --

19 CHAIRWOMAN SANDOVAL: I mean, could we just
20 simplify that entire chunk of language, visually inspecting
21 externally, or like visually inspect a facility externally?

22 COMMISSIONER KESSLER: How about a comprehensive
23 external visual inspection? It doesn't have to be
24 comprehensive, I don't think there is any -- anything about
25 that. We want to be going around and looking at other

1 things, but I think they are, it's just that they have to
2 satisfy this checklist that's going to get complicated for
3 the record. Right?

4 CHAIRWOMAN SANDOVAL: Yeah. And actually, I
5 mean, that's interesting. NMOGA's proposal doesn't actually
6 propose any (unclear). They propose to do it monthly
7 instead of weekly. I, I think we heard enough testimony
8 that I think is important particularly because people will
9 be out there, it's the recordkeeping part, and we simplify
10 that with weekly --

11 COMMISSIONER KESSLER: And there was testimony
12 also from operators, I think it was Mr. (unclear) -- anyway
13 some operator in the northwest, that this is already
14 happening in Colorado. It's something they are accustomed
15 to, and really the question is A test, V test, O test
16 (unclear) the record thing, then this isn't terribly
17 onerous, but it does accomplish a productive goal.

18 CHAIRWOMAN SANDOVAL: I like the language you
19 proposed. So basically scratch all of my mine and just say
20 comprehensive external visual inspection. I like that. Dr.
21 Engler?

22 COMMISSIONER ENGLER: I guess my question is, why
23 do you propose all of that detail?

24 CHAIRWOMAN SANDOVAL: I mean I do think the
25 testimony was a little bit opposite. They meant for it to

1 be somewhat simplistic, but it isn't simplistic to me.

2 COMMISSIONER ENGLER: Well, they are generating
3 the list to get, probably create and get a process where you
4 have a form (unclear) check, check, check. So if you don't
5 have that list, so if have you a comprehensive --

6 CHAIRWOMAN SANDOVAL: External.

7 COMMISSIONER ENGLER: -- then I guess what you
8 are going to have to have is a description, a description,
9 checks are good, but we are going to have to, for getting
10 there, you know, open hatch or something.

11 CHAIRWOMAN SANDOVAL: You decline something.

12 COMMISSIONER ENGLER: You decline something. So
13 I'm guessing -- I shouldn't be guessing -- I believe that
14 the Division wanted that list in there as a way of having it
15 there and it was (unclear) and check if something if was
16 wrong. Now you are going to say you are going to have to
17 write it in, identify and write it and then check it.

18 CHAIRWOMAN SANDOVAL: Actually, I mean, they
19 don't -- the Division didn't specify what all the
20 recordkeeping should look like.

21 COMMISSIONER ENGLER: I think it's implicit in
22 what they are putting in the goal, that's why they have the
23 list.

24 MR. MOANDER: I think Dr. Engler has a good point
25 here because there is a list put into place. If the

1 Commission rules, like it reduces the language, it's going
2 to result in a wide diverse array of reports since the
3 reporting framework isn't mandatory, and I think this
4 implicitly in (5)(a)(i) gives some structure to make sure
5 records are going to be -- the submissions will be
6 consistent and usable.

7 CHAIRWOMAN SANDOVAL: But at the same time the
8 Division -- you know I can go back and pull up the
9 testimony -- specifically said they don't care what the
10 format looks like. (unclear) has some format that would
11 help here. If the Division, I think, truly wanted some very
12 specific things in the reporting, they should have developed
13 a comprehensive form, and their testimony does not match.

14 So I, I see that, Dr. Engler, I guess I'm just --

15 COMMISSIONER ENGLER: I'm good with what you are
16 saying, comprehensive, whatever you said. I was just taking
17 the position of what the Division would think they are
18 doing. If you want to reword it, I'm fine with that. I'm
19 fine with, you know, the modification.

20 CHAIRWOMAN SANDOVAL: I guess, yeah, in my mind,
21 making this modification then negates NMOGA's proposal to do
22 it monthly because we are fixing the problem which was in
23 the testimony of sort of like the onerous nature of that,
24 which really is meant to be, if you are out on site, walk
25 around, see, smell, hear. If you see something different,

1 if you smell something --

2 COMMISSIONER KESSLER: When you are out on site
3 on a weekly basis?

4 CHAIRWOMAN SANDOVAL: Yes. Okay.

5 COMMISSIONER KESSLER: Okay.

6 CHAIRWOMAN SANDOVAL: Chris, that should read
7 comprehensive external visual inspection and meeting weekly
8 requirements.

9 The only additional changes here, one, I think, I
10 think the changes the Division has in (b) and (c) regarding
11 the (unclear) those are good.

12 COMMISSIONER KESSLER: Yes.

13 CHAIRWOMAN SANDOVAL: And then NMOGA proposes in
14 (c) that the AVO inspection be quarterly for stripper wells,
15 and I -- I agree with that change, particularly since we are
16 streamlining the requirements.

17 COMMISSIONER KESSLER: It's basically mandatory
18 that whenever they're on the site, they --

19 CHAIRWOMAN SANDOVAL: Yes.

20 COMMISSIONER ENGLER: This is -- (c), operator
21 shall conduct an AVO inspection weekly if it is on site, and
22 in no case less than once per calendar month.

23 COMMISSIONER KESSLER: So, Dr. Engler, if you are
24 on the site, you can conduct an inspection. If you happen
25 to be there twice a month, you should conduct an inspection.

1 This makes it such that you can't go like December 31 and
2 January 1, and I think that's logical.

3 COMMISSIONER ENGLER: So does that mean, if it is
4 on site, so operator shall conduct AVO inspection weekly if
5 they are on site, or if the operator is on site? The it,
6 what's the "it"?

7 COMMISSIONER KESSLER: Yeah, the it refers to the
8 operator.

9 COMMISSIONER ENGLER: I think that's bad English.
10 Shouldn't it not say if the operator is on site? The
11 operator should -- if they are on site. If the operator is
12 on site.

13 CHAIRWOMAN SANDOVAL: I'm fine with that change
14 if that's what you went.

15 COMMISSIONER ENGLER: The it doesn't refer to
16 anything.

17 CHAIRWOMAN SANDOVAL: I'm fine with that.

18 COMMISSIONER KESSLER: That's fine with me,
19 Dr. Engler.

20 CHAIRWOMAN SANDOVAL: Mr. Moander, did you hear
21 that?

22 MR. MOANDER: Sure did. And I agree with Dr.
23 Engler being fickle with the English.

24 CHAIRWOMAN SANDOVAL: Okay. All right. Yeah I
25 think that cleans up we're rejecting NMOGA's proposal

1 because we basically have already addressed the main
2 concerns in our changes with (5)(a)(i). All right. We are
3 on (f).

4 COMMISSIONER KESSLER: No, we're not, because we
5 have the four items.

6 CHAIRWOMAN SANDOVAL: You're right. Dang. Okay.
7 All right. In the parking lot I have three performance
8 standard items, one best practice requirements for
9 pneumatics, emergency resolution provision, that was due to
10 the eight hours for emergency. It was the discussion of
11 like, you shouldn't have eight hours if you can resolve it
12 sooner. If you have an emergency it should be resolved as
13 quick as possible.

14 COMMISSIONER KESSLER: And quickly and safely as
15 possible.

16 CHAIRWOMAN SANDOVAL: So Mr. Moander, if we are
17 adding this in here do we just do like sort of start at 7?

18 COMMISSIONER KESSLER: (E)(7).

19 MR. MOANDER: Yeah, give me -- sorry, I was
20 looking for something, but, yes, we can do an (E)(7). So
21 let me get back here -- or up here, as it were, my
22 apologies. So (5), (6), (7). All right.

23 COMMISSIONER KESSLER: I'm going to let you guys
24 work on the pneumatics since that's your area of expertise.

25 CHAIRWOMAN SANDOVAL: Okay. So the intent

1 here -- the intent here was that, understanding that the
2 that things can change over time based on technology, if you
3 are particularly building a new facility, and you have
4 access to power, you know, the right type, the amount,
5 consistent power, then you should be installing low -- I'm
6 sorry -- you should be using, you know, no bleed pneumatics
7 (unclear) something like that.

8 COMMISSIONER ENGLER: Your standard setback for
9 each facility (unclear) starting pneumatics, pneumatics
10 should either (unclear).

11 CHAIRWOMAN SANDOVAL: No bleed?

12 COMMISSIONER ENGLER: Clearly. I guess, I guess
13 my only danger of questions, I know the direction we want
14 them to go to, operators to go to, I don't know how far is
15 where we constitute restricting NMOGA.

16 CHAIRWOMAN SANDOVAL: Well, if we did something
17 more generic, and this would cover sort of the low bleed
18 valve too, or if we just said for facilities constructed
19 after effective date of the rule, facilities should be
20 designed to -- what is it -- what are some of the other
21 terms we use, like maximize. We stipulated it the other
22 day.

23 COMMISSIONER KESSLER: Minimize --

24 COMMISSIONER ENGLER: Minimize bleed.

25 COMMISSIONER KESSLER: I think that's a great

1 suggestion because I think that it captures the intent of
2 the rule and obligates operators to continue evolving with
3 best practices as opposed to resting on any individual lower
4 threshold that might be --

5 CHAIRWOMAN SANDOVAL: Does, Mr. Moander, for
6 facilities constructed after effective date of the rule,
7 facilities should be designed to minimize waste, is what we
8 had. I think that would capture the pneumatic piece and the
9 valve piece.

10 COMMISSIONER KESSLER: Well, I think that can
11 just be very simple, too. I think we just say, operators
12 have an obligation to minimize waste and should resolve
13 emergencies as quickly and safely as is feasible as is
14 proper.

15 COMMISSIONER ENGLER: We should check --

16 CHAIRWOMAN SANDOVAL: Well, I'm trying to write
17 it down. Operators have an obligation to minimize waste and
18 shall resolve emergencies as quickly as is safely feasible?

19 COMMISSIONER ENGLER: Keep it separate.

20 CHAIRWOMAN SANDOVAL: Yeah, That's a whole
21 different section. It should be (8), Mr. Moander.

22 MR. MOANDER: As quickly as --

23 CHAIRWOMAN SANDOVAL: -- is safely reasonable.

24 MR. MOANDER: As quickly as is safely feasible.

25 CHAIRWOMAN SANDOVAL: Does that make sense?

1 COMMISSIONER KESSLER: I think that's good.

2 MR. MOANDER: Just for a point of clarity on
3 Subparagraph (7) just drafted, I'm not doing -- I didn't
4 write down facilities should be designed, but putting as
5 shall. Does anyone have a concern about that language?

6 CHAIRWOMAN SANDOVAL: I think shall is good.

7 MR. MOANDER: Okay.

8 CHAIRWOMAN SANDOVAL: I, you know, I just want
9 to -- I don't need it to be written in the rule, but maybe
10 saying it on the record. My intent for Number (7) is, if a
11 facility is already actively under construction right now
12 and you have ordered your -- ordered your equipment, pipes,
13 valves, all of the above, you know, I don't think the intent
14 is for you to now have to redesign your facilities, I mean,
15 as you have already started constructing that facility prior
16 to the effective date of this rule.

17 Now, for facilities constructed after the
18 effective date of this rule, that's when it's starts. Okay.
19 All right, that was -- all right.

20 COMMISSIONER KESSLER: (unclear) I'm going to
21 note at the beginning NMOGA's 7 (unclear) proposed language
22 for (F).

23 CHAIRWOMAN SANDOVAL: And NMOGA is pretty
24 minimal, so --

25 COMMISSIONER KESSLER: I agree with the

1 Division's changes for (1), as reflected in Exhibit 1C, both
2 the measurement and component and estimations, I think that
3 captures the --

4 COMMISSIONER ENGLER: I agree.

5 CHAIRWOMAN SANDOVAL: Yes.

6 CHAIRWOMAN SANDOVAL: So Number (2), I asked
7 Mr. Powell about this. I think -- I think we should remove
8 the word vented. I know it's been -- I don't know. I guess
9 I could go either way, but I like to keep the language
10 consistent throughout the document. I don't think there is
11 any way for you to measure something that's being vented.

12 COMMISSIONER KESSLER: (unclear).

13 CHAIRWOMAN SANDOVAL: Measure.

14 COMMISSIONER KESSLER: Oh, measure. Okay, well
15 let me --

16 CHAIRWOMAN SANDOVAL: So I want to remove the
17 word vented. What do you think?

18 COMMISSIONER ENGLER: Well, since (F) is like the
19 definition of measurement of vented and flared natural gas?

20 CHAIRWOMAN SANDOVAL: Yes.

21 COMMISSIONER ENGLER: So are you suggesting that
22 should be vented or flared?

23 CHAIRWOMAN SANDOVAL: No. But the entire section
24 also doesn't just talk about measurement, it talks about
25 measurement and estimations.

1 COMMISSIONER KESSLER: So maybe that should be
2 measurement or estimation?

3 CHAIRWOMAN SANDOVAL: Yeah, the title maybe.

4 COMMISSIONER ENGLER: I think you would be safer
5 if you did it that way, measurement or -- and/or estimation
6 of flared natural gas, then you are (unclear).

7 CHAIRWOMAN SANDOVAL: Well, I think (2) talks
8 about measurement in particular, and then estimation talks
9 about lower. So maybe the title of (F) should be
10 measurement and -- either and/or, I don't know, and/or --

11 COMMISSIONER KESSLER: I think or because the
12 Division wants the shall measure or estimate. You have to
13 measure or estimate.

14 CHAIRWOMAN SANDOVAL: Okay. Mr. Moander, will
15 you change the title of (F) to measurement or estimation of.

16 And then I think in (2), we should strike the
17 word vented on that second line. We did hear testimony
18 about that from Mr. Powell and he agreed.

19 Okay. The other thing I want to bring up here is
20 this May 31 date. Hang on. I really hate to do this, I'm
21 going to do it. The May 31 date is earlier to in Section
22 (E), we talked about a flared stack installed or replaced
23 after May 31 or before June 1, is there a question -- I'm a
24 little nervous about this date before the effective date of
25 the rule essentially.

1 COMMISSIONER KESSLER: Should we change it to
2 June 30 and July -- june and July? I think the rule will be
3 effectively certainly by the end of July unless we have a
4 hearing on it, in in which case it will be (unclear).

5 CHAIRWOMAN SANDOVAL: Yeah. I mean, Mr. Moander,
6 can you -- instead of going back and then making all of
7 these changes, can we make sure everywhere we say May 31,
8 it's June 31, and everywhere we see June 1, it's July 1?

9 MR. MOANDER: I think you can do that because
10 it's not -- well, you are not doing a substantive change in
11 terms of what the law will actually do. In this case you
12 are doing it contingent on an implementation date that will
13 exceed this. So everything -- so May gets turned to June,
14 and June gets turned to July. Is that correct? Do I
15 understand that?

16 CHAIRWOMAN SANDOVAL: Yes.

17 MR. MOANDER: Okay. I'm just going to note that
18 here, but, yes, that will be -- we can do an omnibus change,
19 and with established law that needs done.

20 COMMISSIONER ENGLER: So when do we think the
21 effective date will be?

22 CHAIRWOMAN SANDOVAL: We're -- I mean, we were
23 postulating yesterday. Okay. Let's assume that we come to
24 a conclusion today. Then we will have to set some sort of
25 date today to review a final order and sign a final order,

1 likely either a special hearing in March or our regularly
2 scheduled hearing in March, which would be at the end of the
3 month.

4 So let's just assume we go with the regularly
5 scheduled, that's March 25 or something, it's usually at
6 least two months, if the rule is not appealed, before like
7 the order is signed -- a month and a half, two months.

8 COMMISSIONER ENGLER: So then we are into June.

9 CHAIRWOMAN SANDOVAL: Right. That's why if we
10 push it back a month, it's probably safer.

11 COMMISSIONER ENGLER: Is it reasonable or as an
12 idea where we would -- I think for the effective date of the
13 order, would it be reasonable to have the time basically at
14 the effective date of order, plus two months, or just as of
15 the effective date of the order or what? We're -- we're
16 particularly choosing (unclear) we don't even know if that's
17 going to be valid.

18 COMMISSIONER KESSLER: Is that possible,
19 Mr. Moander?

20 MR. MOANDER: Just to make sure I understand
21 what's proposed here, it sounds like you are considering
22 language to say, for example, within 60 days from the
23 effective date of this regulation, something like that?

24 COMMISSIONER ENGLER: Yeah.

25 MR. MOANDER: I don't see a problem with that

1 because that's still a date specific. The one thing that I
2 would need to just double check is time calculation because
3 some agencies have their own set of rules for time
4 calculations, but I -- it should be -- I would imagine
5 that's fine. I can't see anything inherently wrong with
6 that, so we can end up -- that's on option.

7 COMMISSIONER ENGLER: Because what I'm doing is
8 trying to get whenever the order is effective.

9 CHAIRWOMAN SANDOVAL: Yes.

10 COMMISSIONER ENGLER: So just saying June or July
11 will work, I'm just -- that's a suggestion. I don't know
12 what we have --

13 CHAIRWOMAN SANDOVAL: How would we write that
14 because we have two different starts. There is the March --
15 I'm sorry, May 31, and that's going concept of --

16 MR. MOANDER: I mean that, I think the way to go
17 about that is giving actual days. You could even specify,
18 you know, calendar days if you wanted, but we would need to
19 have consistently one calculation edition for May and then
20 one for the June date, and we would want that to be as
21 consistent as possible.

22 CHAIRWOMAN SANDOVAL: Well, I don't know how we
23 can say the effective date of the rule.

24 MR. MOANDER: No. What I'm saying is the
25 effective date of the rule plus X days to come into

1 compliance with, for example, a set of May dates. So the
2 effective date of the rule, plus, for the sake of argument,
3 30 days for all May dates. And then with June you could say
4 effective day of the rule plus 60 days. Do you see what I'm
5 saying?

6 CHAIRWOMAN SANDOVAL: Right. But I'm saying why
7 not just do effective date -- either before or after
8 effective date of the rule, because where the May and June
9 comes in is, for example, a flare stack installed or
10 replaced after May 31 shall be equipped with auto flare.

11 A flare stack installed before June 31 has to be
12 retrofitted. So would it be, in my mind, a flare stack
13 installed after the effective date of this rule shall be
14 equipped with auto igniter. A flare stack before the
15 effective date of the rule shall be retrofitted.

16 MR. MOANDER: That is also an option.

17 CHAIRWOMAN SANDOVAL: I think that's how we
18 should do it.

19 MR. MOANDER: Any other comment on that?

20 COMMISSIONER KESSLER: I think that's a good
21 approach.

22 COMMISSIONER ENGLER: Good.

23 CHAIRWOMAN SANDOVAL: I think we have to go
24 backwards and do all of this to make it --

25 MR. MOANDER: Let me just -- I want to make sure

1 we are clear for both me and the record here. So any May
2 date, so it doesn't actually matter whether a date is May or
3 June that's going to be an issue?

4 CHAIRWOMAN SANDOVAL: No. Before or after the
5 effective date of the rule.

6 MR. MOANDER: I'm going to highlight that to
7 circle back so I can take a look at some things maybe over
8 lunch. I have got that entered. We have a place holder for
9 that in a general rule.

10 CHAIRWOMAN SANDOVAL: Okay. All right. Sorry to
11 go backwards, but we needed to do that.

12 COMMISSIONER KESSLER: So we are on (F)(2)?

13 CHAIRWOMAN SANDOVAL: We were on (2), and I think
14 we were good, and then the the dates came up. So in (F)(2),
15 everything is fine as the Division states except for it
16 would be authorized by an APD after the effective date of
17 the rule.

18 COMMISSIONER KESSLER: Right.

19 CHAIRWOMAN SANDOVAL: Okay. Moving on.

20 COMMISSIONER KESSLER: In (3) the Division
21 changed the measuring standard and performance industry
22 standard rather than listing specific devices or technology,
23 and I think that that was a really wise thing to do so the
24 rule has flexibility to conform to the technology.

25 CHAIRWOMAN SANDOVAL: I agree.

1 COMMISSIONER ENGLER: Yes.

2 CHAIRWOMAN SANDOVAL: (4) has no issues. (5)?

3 COMMISSIONER KESSLER: Yes, I agree with the
4 Division's proposed changes. I think that they did that for
5 a couple of reasons that identify low rate or pressure as
6 being potential reason for estimation. I think there's
7 evidence to support that. And also as (unclear) possibility
8 for operators that are estimating so that an audit could
9 take place to ensure the accuracy of that estimation. So I
10 would support that.

11 CHAIRWOMAN SANDOVAL: I agree.

12 COMMISSIONER ENGLER: I agree.

13 CHAIRWOMAN SANDOVAL: Number (6) NMOGA has
14 proposed to remove heating value, and we did hear testimony
15 as to why. I can't remember exactly which --

16 COMMISSIONER KESSLER: It was Greaves.

17 CHAIRWOMAN SANDOVAL: Greaves. I believe I asked
18 Mr. Bolander about it. I can't recall, I think he agreed as
19 well. I'm fine with removing that. Dr. Engler, any of your
20 expertise with that aspect important?

21 COMMISSIONER ENGLER: For D.

22 CHAIRWOMAN SANDOVAL: Yes. In this context I
23 think that -- because you are in the context with an annual
24 GOR test, the heating value is really not necessary. It's
25 the volume rate which you should be able to calculate.

1 CHAIRWOMAN SANDOVAL: Okay. Okay. So then based
2 off of Mr. Greaves' testimony and then Dr. Engler's
3 expertise in the area, I am good with removing the and
4 heating value.

5 COMMISSIONER KESSLER: I agree with that.

6 CHAIRWOMAN SANDOVAL: And then any changes by any
7 of the parties, I'm --

8 COMMISSIONER KESSLER: Yes, I think that the -- I
9 think the Division made these changes so they retain some
10 control over an acceptance of whether or not metering should
11 be used in lieu of estimation. I think it's just for the
12 Division to have the authority to make its own assessment on
13 the provision.

14 CHAIRWOMAN SANDOVAL: I agree.

15 COMMISSIONER ENGLER: I agree as well.

16 CHAIRWOMAN SANDOVAL: (G), all right. First off,
17 there was a change of the title. I am fine with the
18 addition of reporting of natural gas. Just that clarity.

19 COMMISSIONER KESSLER: Agree.

20 CHAIRWOMAN SANDOVAL: Okay.

21 COMMISSIONER KESSLER: Mr. Moander, the expert
22 comment appears some places and does not appear other
23 places. I don't -- I don't have a very quick --

24 MR. MOANDER: I will go back and I will -- I
25 will clean that sort of stuff up to your satisfaction,

1 Commissioner. I'm there with you.

2 COMMISSIONER KESSLER: Thank you.

3 CHAIRWOMAN SANDOVAL: I am good with the change
4 in (1) in the title.

5 COMMISSIONER KESSLER: Yes, I agree.

6 COMMISSIONER ENGLER: Yes.

7 CHAIRWOMAN SANDOVAL: I actually wonder should
8 (1) be bolded.

9 MR. MOANDER: That's just a formatting issue,
10 Madam Chair. I will go through and clean that up as well.

11 CHAIRWOMAN SANDOVAL: It seems to be sort of
12 consistent throughout here. (2) is a bolded, (3) is not.
13 Can we just clean up that, too, please?

14 I don't really care how we do it, but it seems
15 like every place --

16 MR. MOANDER: No, I think you are right. I'm
17 going to leave that to remind me to come back, but, yes, we
18 can.

19 CHAIRWOMAN SANDOVAL: Okay. So this is the
20 language that sort of align some of the statements, I think,
21 if I'm recalling, some of it came out of Part 29.

22 COMMISSIONER KESSLER: Yes. I think it was the
23 result of Mr. Powell's testimony to clarify when the C-129
24 or the C-125 would be used. This language just added
25 clarity.

1 CHAIRWOMAN SANDOVAL: I think the testimony was
2 it was not intended to be (unclear).

3 COMMISSIONER KESSLER: Correct.

4 COMMISSIONER ENGLER: I believe it was
5 Mr. Powell.

6 CHAIRWOMAN SANDOVAL: Yes.

7 COMMISSIONER ENGLER: Who said that.

8 COMMISSIONER KESSLER: Yes, I that's Powell.

9 CHAIRWOMAN SANDOVAL: Okay. So (a), we're good
10 with the changes. There were no edits by Climate Advocates
11 or NMOGA. Okay, (1)(a).

12 COMMISSIONER ENGLER: (i) from a single event
13 aligns it with the language in (a). My other point of
14 contention, I think it's in a couple of places here, we have
15 got to get rid of the language appropriate district office.
16 It should just be notify the Division. Any place where it
17 says notify the appropriate district office needs to be
18 struck. That is not the way OCD operates, particularly in
19 this situation. That is a relic of the past. So it should
20 just say, notify the Division. And I see it in a couple of
21 other places. I will try to bring it up when I see it, just
22 so you know.

23 COMMISSIONER KESSLER: So I think it's in there
24 as well, yeah. Where is it?

25 CHAIRWOMAN SANDOVAL: It's after the single

1 event, again in double (ii) single event aligns it with
2 above, but let's get rid of appropriate district office and
3 just make it Division.

4 COMMISSIONER KESSLER: Mr. Moander, maybe you can
5 do a search and replace on that one so we don't have to
6 repeat it.

7 MR. MOANDER: I would not recommend expending
8 energy finding that right now.

9 CHAIRWOMAN SANDOVAL: It's been excluded in (3).

10 MR. MOANDER: Just click on (G)(1)(a)(i) from the
11 single event, I don't think that was addressed.

12 CHAIRWOMAN SANDOVAL: Oh, I mean, that aligns
13 with Part 29 in how the Division -- I think how the rest of
14 this rule aligns.

15 COMMISSIONER KESSLER: Yeah, I think that sort of
16 starts with the testimony of Mr. Powell in a way that the
17 current 29 (unclear).

18 COMMISSIONER ENGLER: I agree.

19 CHAIRWOMAN SANDOVAL: So all of the places they
20 add from a single event in this section just aligns to the
21 entire section.

22 COMMISSIONER KESSLER: So all of the sections are
23 good.

24 CHAIRWOMAN SANDOVAL: Okay. There is, in (3),
25 there is a proposed (3) by Climate Advocates.

1 COMMISSIONER KESSLER: Yes. This is something
2 regarding notice to the community for major releases.

3 CHAIRWOMAN SANDOVAL: That would not align it
4 with Part 29. And I actually sort of wonder about the
5 Division's authority on that.

6 I don't recall this being addressed other than by
7 Climate Advocate's witness. Oh, OCD did address it, though.

8 COMMISSIONER KESSLER: I guess what I would say
9 is, I don't know in this what site or addition legal review
10 regarding whether or not OCD has jurisdiction to require
11 operators to provide notice to the general public.

12 What I would say is I think that if it were to --
13 if OCD was determined to have that authority and could
14 require operators to do that, it would be more logically
15 placed in a (unclear) still rule so that any type of release
16 required similar notification.

17 And so I would suggest that following that legal
18 analysis or following decisions related to this rule, I mean
19 obviously that's for specific groups for that potential
20 change to the (unclear) still rule because it's sort of
21 including (unclear) for vented or flared gas.

22 COMMISSIONER ENGLER: Is the (unclear) still
23 rule, is that in 29?

24 CHAIRWOMAN SANDOVAL: 29, yeah. I would really
25 want to see that reworded. OCD is not a first responder.

1 For example, if there was a major incident or a release,
2 inspectors and staff should absolutely should not be going
3 to that site, it is unsafe. And we work pretty extensively
4 with obviously the police or the sheriff's office, for
5 example (unclear) an area.

6 Ocd inspectors are absolutely not supposed to be
7 at those sites. They have not been trained as first
8 responders, nor are they first responders, and so I would
9 have concerns about that. I would also be a little
10 concerned with any sort of, as Commissioner Kessler says,
11 having a misalignment between Part 29 and this section since
12 this section is predominantly out of Part 29.

13 MR. MOANDER: I would also point out here,
14 Commission, that this is reporting of vented or flared
15 natural gas, and it does seem consistent throughout the
16 provision in Subsection G talking about reporting to the
17 Division.

18 And I guess any reporting could be deemed public
19 reporting in a sense, but I think placing it here could be a
20 misplacement just because of the consistent subject matter
21 and target and apparent intent of the regulation.

22 CHAIRWOMAN SANDOVAL: Okay.

23 MR. MOANDER: As to the legal analysis, I will
24 look up a little more on this because I do think there may
25 be some jurisdictional issues, but I don't want to speak to

1 those until I'm confident.

2 CHAIRWOMAN SANDOVAL: Okay. All right. I mean,
3 my preference for now would be not to include it, and
4 following a legal analysis at another time to review the
5 value in adding that Subpart 29.

6 COMMISSIONER KESSLER: I agree with that.

7 COMMISSIONER ENGLER: I would occur with that as
8 well.

9 CHAIRWOMAN SANDOVAL: Okay.

10 CHAIRWOMAN SANDOVAL: So (G), we are now on
11 (G)(1)(b). The additional compositional analysis as
12 representative of a well or facility, I think there
13 was testimony on that. But I think it makes sense because I
14 believe the term is already in the Greenhouse Gas Reporting
15 Rule, you can representative analyses. And it seems
16 relatively straightforward and reasonable and clarifying an
17 analysis as a compositional analysis makes sense to me. I
18 think that's what it was intended as, that just qualifies it
19 and makes it clearer.

20 COMMISSIONER KESSLER: I agree with that.

21 COMMISSIONER ENGLER: I think we all agree with
22 that.

23 CHAIRWOMAN SANDOVAL: All right. Then we can go
24 down, I think the next --

25 COMMISSIONER KESSLER: The changes to Climate

1 Advocates, Subpart (c).

2 COMMISSIONER ENGLER: (7) or (8)?

3 COMMISSIONER KESSLER: Yes, (7).

4 CHAIRWOMAN SANDOVAL: All right. What was the
5 Division's testimony on this? This was like not the
6 appropriate place to do it, or I feel like there was
7 something in that section or (unclear). Do you have that
8 table, Dr. Engler?

9 COMMISSIONER KESSLER: I have that table.

10 HEARING EXAMINER ORTH: Madam Chair, it was in
11 Mr. Powell's testimony. Essentially the Division's position
12 was that there was no need to add to a non-exclusive list.

13 COMMISSIONER KESSLER: Well, that makes sense.

14 CHAIRWOMAN SANDOVAL: Yeah.

15 COMMISSIONER ENGLER: According to the OCD
16 rebuttal, OCD intends to provide a series of check boxes on
17 the C-129. They include many of the problems presented by
18 both sides with many different descriptors. So basically
19 OCD appreciates what they all did, but I guess they want to
20 draft their own type of --

21 CHAIRWOMAN SANDOVAL: Yeah, I was thinking that
22 was a controlled form, and actually I agree with that
23 because that would be a better place to do it because if
24 it's in the rules, you are stuck with those categories.

25 If it's done within a form then, you know, it's,

1 six months down the road we figure out there is some
2 category that people keep writing in inconsistently, you
3 know, we can just modify the form to add that category,
4 whereas if it was in a rule it would be kind of stuck.

5 So I agree with the Division's assertion on that,
6 and should give the Division that flexibility to manage
7 that. And I think it still meets what the intent of Climate
8 Advocates is, just in a different manner.

9 COMMISSIONER ENGLER: I think Climate Advocates
10 is correct what they want to see. I would agree, I think if
11 it's in the rule, you are stuck with it. I like the
12 flexibility and I am almost certain that all of these are
13 going to be followed in Division formatting anyway, plus
14 others, so I would concur with that.

15 CHAIRWOMAN SANDOVAL: I think that's all three of
16 these.

17 COMMISSIONER ENGLER: Yeah, that's correct.

18 CHAIRWOMAN SANDOVAL: I would suspect on that
19 form, you know, less whatever correction -- corrected
20 action, and then I would assume the check boxes are going to
21 be (unclear) compression, all those check boxes are already
22 going to be there, but this really would just box the
23 Division in.

24 COMMISSIONER KESSLER: Yes, I agree with you, but
25 I would hope that the Division would take Climate Advocates

1 (unclear).

2 CHAIRWOMAN SANDOVAL: I agree.

3 COMMISSIONER KESSLER: And adopt it or include
4 the list that -- I hope the Division will consider including
5 that.

6 CHAIRWOMAN SANDOVAL: I agree. I strongly
7 encourage the Division to include Climate Advocates proposal
8 in developing that form.

9 HEARING EXAMINER ORTH: Madam Chair, it's two
10 hours since we started. I'm wondering if a break would be
11 appropriate.

12 CHAIRWOMAN SANDOVAL: Sure. All right. Let's do
13 a 20-minute break and come back at 11:20.

14 MR. MOANDER: Just a thought on this. What's the
15 plan for lunch today, Madam Chair?

16 (Overtalk.)

17 CHAIRWOMAN SANDOVAL: We will likely do what we
18 did yesterday, probably order something in and take a short
19 break and just keep going.

20 MR. MOANDER: I just want to make sure I have
21 time to throw some stuff in the microwave. That's all.

22 CHAIRWOMAN SANDOVAL: Thank you. We will be back
23 around 11:20.

24 (Recess taken.)

25 CHAIRWOMAN SANDOVAL: All right. Probably around

1 12:15 we will take a ten-minute break for lunch and then
2 keep powering through, so just a forewarning for everybody.
3 All right. Where were we? About to start (b)?

4 COMMISSIONER KESSLER: No, (G)(1).

5 COMMISSIONER ENGLER: (G)(1)(b)?

6 CHAIRWOMAN SANDOVAL: (b) as in boy.

7 COMMISSIONER KESSLER: You know what, did we wrap
8 up the changes proposed by Climate Advocate in Roman
9 numerals (b) 8 and 9. I think the determination was that --
10 that OCD had authority over forms and so they were going to
11 take a look at those categories in formulating those, and we
12 wanted the Division discretion. To make sure the record is
13 clear. I think we all agreed on that; right?

14 CHAIRWOMAN SANDOVAL: Yes.

15 COMMISSIONER ENGLER: You are correct.

16 CHAIRWOMAN SANDOVAL: Yeah, I think we had -- the
17 only thing we need to verify is that (G)(1)(d). Did we do
18 (d)?

19 COMMISSIONER KESSLER: No, but I guess that
20 conforms with the C-129 language.

21 CHAIRWOMAN SANDOVAL: That's right.

22 COMMISSIONER KESSLER: I support this language,
23 also -- yes, I do, I support this.

24 CHAIRWOMAN SANDOVAL: And okay, in (2), we did
25 have some extensive discussion about this section, so we

1 should be able to rely on that testimony from yesterday for
2 this section -- not testimony. We are not testifying -- all
3 of that discussion yesterday. All right, (G)(2).

4 COMMISSIONER KESSLER: So this initial language
5 for each well of facility clarifies the Division's intent
6 which I understood throughout the proceeding is intended to
7 file well or facility basis as opposed to production unit
8 number, so I am glad that these changes were made. I think
9 that it's in line with the language with (unclear).

10 CHAIRWOMAN SANDOVAL: I agree. All right. I
11 think there was quite a bit of testimony from Mr. Powell and
12 Mr. Martinez.

13 COMMISSIONER KESSLER: Yes.

14 CHAIRWOMAN SANDOVAL: From the State Land Office,
15 a handful of people, why it's important to be referred to on
16 an individual well or a facility basis.

17 I think we do need to talk about this section
18 here where it says, beginning July 1 the operator that
19 gather data. I think we discussed yesterday is it should be
20 beginning different October 1?

21 COMMISSIONER ENGLER: Yeah, fourth quarter.

22 CHAIRWOMAN SANDOVAL: Yeah. So beginning October
23 1, the operator shall gather data for quarterly report in a
24 format specified by the Division and submit by February 15
25 for the fourth quarter, and submit by May 15?

1 COMMISSIONER ENGLER: For the first quarter in
2 2022.

3 CHAIRWOMAN SANDOVAL: Yeah, so three months after
4 February 15 would be May 15; right? May 15 to report on
5 January through March.

6 COMMISSIONER KESSLER: That's right.

7 COMMISSIONER ENGLER: First quarter of '22.

8 COMMISSIONER KESSLER: Yeah.

9 COMMISSIONER ENGLER: That was going to be --

10 COMMISSIONER KESSLER: Should we change May then?
11 It will say May 2020 for the first quarter of 2020.

12 MR. MOANDER: All right. So you guys can see,
13 this should be fourth quarter then and then this would be
14 first quarter?

15 COMMISSIONER ENGLER: Of 2022.

16 MR. MOANDER: 2022, there we go. And this should
17 be 2022.

18 COMMISSIONER KESSLER: That should be 2021.
19 Fourth quarter of this year and first quarter of next year.

20 MR. MOANDER: Oh, okay. Got it.

21 CHAIRWOMAN SANDOVAL: Just for the record, this
22 is based on all the discussion we had yesterday about timing
23 and our concerns with the rule effective date and when it be
24 effective and if it would give operators and the Division
25 enough time to actually implement this rule.

1 And we believe if we push this back for three
2 months, that there is going to be much better data quality
3 instead of having a bunch of extensions requests. And so on
4 that, I think -- I don't think we include the language from
5 NMOGA that says unless otherwise approved by the Division.

6 I'm very concerned how that would practically
7 function and if the Division were to get a lot of requests,
8 how would that even work at the end of the day. So I don't
9 think we include that language by NMOGA, but I think we are
10 managing some of those concerns in this updated language as
11 we discussed yesterday.

12 MR. MOANDER: Just to clean this up, in the first
13 sentence of this Subsection (2) is the edition of separately
14 and natural gas and volume of. Any issue or discussion with
15 that?

16 CHAIRWOMAN SANDOVAL: I think that's what we
17 talked about.

18 COMMISSIONER KESSLER: That's clarifying
19 language.

20 COMMISSIONER ENGLER: We're good with that.

21 CHAIRWOMAN SANDOVAL: All right. Okay.

22 COMMISSIONER ENGLER: And after, after that
23 quarter -- so should it say that beginning what, April 2022,
24 instead of January, the operator shall --

25 CHAIRWOMAN SANDOVAL: You're right, yes.

1 COMMISSIONER ENGLER: So, yes, that should be
2 April. That will be consistent with --

3 CHAIRWOMAN SANDOVAL: Yes, good catch.

4 Now, there are a couple of comments here, so
5 let's just address, again, I think holistically the
6 exclusion by NMOGA in (d) -- in (2) (d), (e), (f), (i) and
7 (j). We can address (h) in a second, but let's first look
8 at the (d), (e), (f), (i) and (j), which are the routine
9 downhole maintenance category, uncontrolled storage tanks,
10 pneumatics and thief hatches. There was extensive
11 discussion yesterday as to why those categories should be
12 left in, either because they are waste or because they are
13 beneficial use and need to be reported.

14 COMMISSIONER KESSLER: Yes, I would rely on the
15 record from yesterday. I think we had extensive discussion
16 and pulled in supporting testimony from the record. And so
17 I agree that we have (unclear) those categories --

18 CHAIRWOMAN SANDOVAL: We leave that one in, but
19 as it's proposed in the Division's, the additional changes.
20 Where was that section? Let me make sure we get that.

21 COMMISSIONER KESSLER: That's under --

22 HEARING EXAMINER ORTH: Madam Chair, that's in
23 the next section which is (3).

24 CHAIRWOMAN SANDOVAL: All right.

25 COMMISSIONER ENGLER: Did we not discuss

1 yesterday the -- under (f), the uncontrolled storage tanks,
2 I think the word uncontrolled is going to be eliminated?

3 CHAIRWOMAN SANDOVAL: Yes.

4 COMMISSIONER ENGLER: I can't remember if there
5 was more to that, but that was the substance of that.

6 CHAIRWOMAN SANDOVAL: No, I think we were just
7 going to leave it at storage tanks and not differentiate.

8 COMMISSIONER ENGLER: I think that addresses --
9 Climate Advocates had a flaring of controlled storage tanks
10 as another item, so I believe that would capture the --

11 CHAIRWOMAN SANDOVAL: Yes, and if a storage tank
12 is routed to a VRU, then it wouldn't even count in here
13 because it's not vented or flared.

14 CHAIRWOMAN SANDOVAL: The one thing I do want to
15 hit on, we talked about yesterday how a malfunctioning
16 pneumatic controller would get counted in (b) non-scheduled
17 maintenance and malfunction, again I'm just a little
18 concerned about the language in the term malfunction, the
19 definition of malfunction that says a malfunction
20 substantially disrupts operations.

21 I wonder if we -- if -- if this would be solved
22 if we look at the definition of malfunction instead of it
23 being on the back end. I wonder if instead of saying
24 equipment breakdown beyond reasonable control of the
25 operator, that -- and get rid of the word substantially and

1 just say disrupt operations. Or is that going to create
2 other problems elsewhere?

3 Because that would also help with the pneumatics
4 part -- I sorry, pneumatics would be fugitive, then a
5 malfunctioning fugitive component would get counted in (b)
6 because that piece of equipment is malfunctioning. The
7 concern was that it's not substantially disrupting
8 operations, but it may disrupt operations.

9 I don't know. What do you think, Dr. Engler? Do
10 you see the concern at least, where I'm going?

11 COMMISSIONER ENGLER: If you leave out the word
12 substantial?

13 CHAIRWOMAN SANDOVAL: I think there is a good
14 chance a pneumatic controller may malfunction and interrupt
15 operations, the language that malfunctioning fugitive
16 emission or valve or whatever.

17 COMMISSIONER ENGLER: OCD's proposed testimony
18 from Mr. Bolander states OCD's -- and again this is going
19 back to your definition of malfunction.

20 CHAIRWOMAN SANDOVAL: Okay.

21 COMMISSIONER ENGLER: Section (7). OCD's
22 definition is identical to BLM in the terms operators cannot
23 claim any disruption constitute (unclear). So that --
24 that's the Division's.

25 CHAIRWOMAN SANDOVAL: So it may have problems.

1 COMMISSIONER ENGLER: Again, we are moving
2 towards such things.

3 CHAIRWOMAN SANDOVAL: Well, then how do we
4 address where -- I guess then the question is, what category
5 would a malfunctioning pneumatic controller or valve fall
6 in, because what we have said is, for pneumatics, that's
7 beneficial use is on the use gas, on gas use, whatever,
8 whatever the terminology is there -- and so that's
9 beneficial use, but until, until the point where it's
10 malfunctioning, and then that's the waste, so where is that
11 going to get captured in here?

12 COMMISSIONER ENGLER: I think -- isn't
13 malfunctioning defined under (G)(2)(b)?

14 CHAIRWOMAN SANDOVAL: No. I mean, again I go
15 back to the definition of malfunction. I don't think
16 malfunctioning pneumatic controller would actually fall
17 within the definition of malfunction.

18 COMMISSIONER ENGLER: Because of the substantial.

19 CHAIRWOMAN SANDOVAL: Because it could
20 substantially disrupt operations. I think a malfunctioning
21 pneumatic controller, and like a leaking valve, may not be
22 substantially disrupt operations and therefore may not be a
23 malfunction.

24 COMMISSIONER ENGLER: Yes.

25 CHAIRWOMAN SANDOVAL: So that's my concern, but

1 we need to -- and we.

2 COMMISSIONER KESSLER: Could we state also should
3 include malfunctioning valves, or whatever you said,
4 malfunctioning pneumatic valves?

5 CHAIRWOMAN SANDOVAL: I think we have to take the
6 word malfunction out of it because then it would tie back to
7 the definition. What if we said, non-scheduled maintenance,
8 malfunction or outside of normal operations.

9 COMMISSIONER KESSLER: I like that.

10 COMMISSIONER ENGLER: See, (i), this two (i)'s is
11 no operation. So you're separating the at no operation
12 (unclear). So your issue is with (i), is that correct?

13 CHAIRWOMAN SANDOVAL: My issue is basically with
14 the term malfunction, and either we have to fix the term
15 malfunction, which I understand from the Division what the
16 perspective is there (unclear) analysis change that, but now
17 where -- what bucket do those fall in if they don't -- if
18 they are not, I think, current definition, a malfunction?

19 Would that be routine repair and maintenance? I
20 don't know if -- I guess I don't also see a malfunctioning
21 controller during the time that it's malfunctioning or
22 whatever, I don't think those, that waste, would be
23 attributed to a repair; that would be outside of the repair.
24 That's my only problem here. No big deal.

25 COMMISSIONER ENGLER: Yeah. I guess my take is

1 that (b) and (c) it's captured. Normal operations is (i),
 2 malfunctioning is (b). If it's not a malfunction then it
 3 comes under routine repair and maintenance. I think the
 4 Division did a pretty good job of trying to capture all of
 5 those layers. There may be something that falls through,
 6 but I'm pretty comfortable with the way it is.

7 COMMISSIONER KESSLER: The only thing I could see
 8 out of here, because they have non-scheduled maintenance and
 9 malfunction is keeping abnormal pneumatics.

10 CHAIRWOMAN SANDOVAL: Abnormal operations of
 11 pneumatics, valve connectors and flanges?

12 COMMISSIONER KESSLER: I don't know if that's
 13 too -- I don't know if that's too much. I'm just trying to
 14 find a solution. I don't know if we --

15 CHAIRWOMAN SANDOVAL: What if we just say
 16 abnormal operations of equipment?

17 COMMISSIONER KESSLER: And keep it for --

18 CHAIRWOMAN SANDOVAL: Okay, I --

19 COMMISSIONER ENGLER: I think if we just keep it
 20 as (unclear) there is no -- we have to keep five years of
 21 information so the Division can inspect it. The Division
 22 will have the flexibility in looking at the maintenance
 23 decisions about things will be wasting one another and be
 24 able to address those.

25 I don't want to be too definitive for the

1 Division. I don't mind including abnormal operations. I
2 think the way this is set up is to allow the Division to see
3 the things and be able to address or request to address.

4 CHAIRWOMAN SANDOVAL: Okay. So say including
5 abnormal operations of equipment? And that's what makes
6 it --

7 COMMISSIONER ENGLER: Yes.

8 CHAIRWOMAN SANDOVAL: Okay. All right. Now why
9 don't we look at (h). We talked this yesterday. I think we
10 talked about including something that says, except as
11 otherwise approved by the Division.

12 COMMISSIONER KESSLER: I have that down. And
13 that would address the situation where the operator may have
14 introduced oxygen for a reason that is acceptable to the
15 Division.

16 CHAIRWOMAN SANDOVAL: Mr. Moander, sorry, that's
17 on the back end of (2)(i).

18 COMMISSIONER KESSLER: Under (h).

19 CHAIRWOMAN SANDOVAL: (H) little, 2 little (i.)
20 And we had extensive conversations about that yesterday as
21 well.

22 MR. MOANDER: This is correct right here, right,
23 (h)(i)?

24 CHAIRWOMAN SANDOVAL: No, under the second one.

25 MR. MOANDER: Oh, (h)(ii)?

1 CHAIRWOMAN SANDOVAL: Yeah.

2 MR. MOANDER: Got it.

3 COMMISSIONER ENGLER: When we're done, we need to
4 step back to (G). Climate Advocates has changes to it.

5 CHAIRWOMAN SANDOVAL: I thought we did that one.

6 COMMISSIONER KESSLER: Yes.

7 CHAIRWOMAN SANDOVAL: And we were just going to
8 say storage tanks.

9 COMMISSIONER ENGLER: This (G) is (unclear) as
10 gas gathering system. Do you see there?

11 COMMISSIONER KESSLER: Was it storage tank?

12 COMMISSIONER ENGLER: Storage tank.

13 CHAIRWOMAN SANDOVAL: Oh.

14 COMMISSIONER KESSLER: I think we need to break
15 that out.

16 CHAIRWOMAN SANDOVAL: I wonder if this is going
17 to be -- I don't know, maybe -- I guess I'm not sure what
18 that is.

19 COMMISSIONER KESSLER: I think it's essentially
20 for accountability, the way that the two categories are put
21 together and they want to be able to see where it -- I think
22 it's to --

23 COMMISSIONER KESSLER: (G)(2), either (G) or (A),
24 I'm not sure what --

25 HEARING OFFICER ORTH: Madam Chair, the Division

1 presented testimony by Mr. Bolander that the category would
2 not be required because the tanks are controlled, meaning
3 their emissions were being captured for beneficial use or
4 destruction and flare.

5 COMMISSIONER KESSLER: I think the new (G) that
6 does (unclear) separation phase related which is related to
7 the current OCD proposal which would require capture at all
8 stages of the flowback process (unclear). Finally, this
9 non-exhaustive list is not necessary due to concerns in
10 complex matters otherwise addressed in this rule.

11 CHAIRWOMAN SANDOVAL: I would agree that
12 processing plant is included in the gathering system, in
13 that terminology.

14 COMMISSIONER KESSLER: I would agree that some of
15 the concepts are not elsewhere in the rule with specificity,
16 so at least at this point I think that the OCD's rationale
17 for not including these additional categories is sound.

18 COMMISSIONER ENGLER: I agree. If you look at
19 the proposal, Mr. Bolander addresses some aspects. Part of
20 it has to do with their proposal for the -- the part (c),
21 and we eliminate that. So I think what Dave said in his
22 rebuttal was sufficient to not include all of the --

23 CHAIRWOMAN SANDOVAL: Okay. I agree with that.
24 Okay. I think we need to update (j) to be consistent with
25 the Division's (j) to be consistent with what we did

1 earlier. We got rid of the thief hatches -- well, we got
2 rid of the routed, I think, routed to a flare control
3 device.

4 Again, I am not sure why we only care about thief
5 hatches that are routed to controlled tanks. We heard
6 testimony from Mr. Bolander on that, but I think, as a
7 practice, thief hatches should be closed whether it's on --
8 I don't care what type of tank, all tanks. So I would say
9 on (j), and this would be consistent with what we did
10 earlier in the rule, we need to get rid of that routed to a
11 flare control device.

12 COMMISSIONER KESSLER: Yes, I agree with that.

13 COMMISSIONER ENGLER: Yes.

14 MR. MOANDER: Before we get too far down, (h)(i),
15 the concentrations info, I didn't catch any comments on that
16 change.

17 CHAIRWOMAN SANDOVAL: We talked about that really
18 extensively yesterday.

19 MR. MOANDER: Right. But I went to make sure
20 that that specific change is acceptable.

21 CHAIRWOMAN SANDOVAL: Yes.

22 COMMISSIONER ENGLER: Yes.

23 COMMISSIONER KESSLER: Yes. And the next change
24 is NMOGA's proposal to eliminate the other category from.
25 I'm looking at rebuttal from Mr. Powell.

1 CHAIRWOMAN SANDOVAL: I actually I don't think
2 they are trying to get rid of it now.

3 COMMISSIONER KESSLER: If we look at, I'm looking
4 at Page 8 of NMOGA's.

5 CHAIRWOMAN SANDOVAL: Okay.

6 CHAIRWOMAN SANDOVAL: Eight?

7 COMMISSIONER KESSLER: Eight. And the change the
8 other categories (unclear) recognizes it would not be
9 appropriate to require the operator to report.

10 CHAIRWOMAN SANDOVAL: Well, if we look at (10)
11 they don't propose to get rid of it entirely.

12 COMMISSIONER KESSLER: Okay.

13 CHAIRWOMAN SANDOVAL: I know they wanted to get
14 rid of it originally in their testimony.

15 COMMISSIONER KESSLER: Looking at the next
16 paragraph -- anyway, okay.

17 CHAIRWOMAN SANDOVAL: We need to look at (k). We
18 need to change the four to eight to be consistent with the
19 definition.

20 COMMISSIONER ENGLER: That's good, consistency.

21 CHAIRWOMAN SANDOVAL: What about (l), I mean --
22 (l) was discussed at length during the testimony, and I
23 think it should be reported separately to track that
24 separate from the venting and flaring from exploratory
25 wells.

1 COMMISSIONER KESSLER: Yes.

2 COMMISSIONER ENGLER: Agreed.

3 CHAIRWOMAN SANDOVAL: Now, I need (m), is the
4 other.

5 COMMISSIONER KESSLER: I thought we already did
6 that. We agreed --

7 REPORTER: Can I ask you to speak up, please?

8 COMMISSIONER KESSLER: Yes. I don't know that
9 this -- I'm look at a paragraph that I -- in NMOGA's
10 proposal that I don't understand that (unclear) it's not in
11 the correct category, so I see it then under (m), the
12 changes specifically that they reference regarding (m), and
13 I don't specifically (unclear) I would accept NMOGA's
14 proposed M.

15 CHAIRWOMAN SANDOVAL: Yeah, I'm fine. I think,
16 what, 19.15.2 (W)(1)(b), that probably just ties it right
17 back to that definition, technically.

18 COMMISSIONER KESSLER: Yes.

19 CHAIRWOMAN SANDOVAL: I think that's -- I'm fine
20 with adding the word surface. And there was testimony, and
21 we did talk about the adjusting other was a little too
22 wishy-washy, and so the Division added the waste as defined
23 in 19.15.2 (A) and (B) that is not described above, so I
24 think this clarifies things and aligns it with what was
25 discussed during the testimony. But I would be fine with

1 NMOGA's proposal. So, Mr. Moander --

2 COMMISSIONER ENGLER: I got it.

3 CHAIRWOMAN SANDOVAL: Great. All right. We also
4 need to make sure (3)(a) is in there, and (b), so we need to
5 make sure that's not lost.

6 MR. MOANDER: I'm sorry, Madam Chair, what were
7 you referring to?

8 CHAIRWOMAN SANDOVAL: In the OCD's notice of
9 additional changes, document.

10 COMMISSIONER KESSLER: Oh, yes.

11 CHAIRWOMAN SANDOVAL: There are changes to
12 8(G)(3)(a) and 8(G)(3)(b), so we need to make sure to have
13 this discussion.

14 Let's look at 8(G)(3) first, and then we can go
15 to (a). And maybe just adding any comments from Climate
16 Advocates, none from NMOGA on that provision. I might just
17 say, I'm fine with this language, other than should we say,
18 will publish an operator's decision to flare natural gas to
19 say something on the OCD website. They can refer to the
20 website where we are going to publish it.

21 COMMISSIONER KESSLER: Yeah, that makes sense.

22 CHAIRWOMAN SANDOVAL: I don't think we need to be
23 specific and say at like this URL, but I think we could say
24 like on the Division's website.

25 COMMISSIONER KESSLER: Yes. So upon submittal of

1 the C-115 report, the Division will compile and publish on
2 the Division website an operator (unclear) flare and natural
3 gas.

4 CHAIRWOMAN SANDOVAL: Mr. Moander, did you get
5 that?

6 MR. MOANDER: Sorry, folks. I am working with
7 Mr. Ames on fixing a citation issue. So give me just a
8 second here. I believe I have corrected that on Subsection
9 (m) to get the correct citation to the rule. It should not
10 be a dot W, it should be a parentheses, so I wanted to get
11 that cleaned up. So you guys are talking about what section
12 again?

13 CHAIRWOMAN SANDOVAL: Three.

14 MR. MOANDER: Okay. So what are we changing
15 here? You got my attention.

16 COMMISSIONER KESSLER: So after the word
17 published, you can add on the Division's website. Will
18 compile and publish on the Division's website.

19 CHAIRWOMAN SANDOVAL: Perfect.

20 COMMISSIONER ENGLER: Out of curiosity, the
21 C-115B that (unclear) so the Division is going to be
22 publishing that when?

23 CHAIRWOMAN SANDOVAL: Yes.

24 COMMISSIONER ENGLER: And that's going to occur
25 one month after what?

1 CHAIRWOMAN SANDOVAL: Reports are due basically
2 45 days, so like 15 days after close of the following month.

3 COMMISSIONER ENGLER: And that would be published
4 when, 15 days after?

5 CHAIRWOMAN SANDOVAL: I don't know if we need to
6 say that.

7 COMMISSIONER ENGLER: I'm asking out of
8 curiosity.

9 CHAIRWOMAN SANDOVAL: I mean, since the Division
10 talked about trying to do some sort of online reporting
11 system, so if all the entries is already being done by the
12 operators, I would assume that that data could be available
13 quickly. I think that's the intent.

14 COMMISSIONER ENGLER: Just curious. Okay. Move
15 on.

16 CHAIRWOMAN SANDOVAL: All right. Now we need to
17 look at the new (a) by the Division.

18 COMMISSIONER KESSLER: Because that says Section
19 8(G)(b)(a) is marked as a new -- it was misfiled by Mr. Ames
20 as a separate document.

21 MR. MOANDER: So I've got that in front of me.
22 And just to make sure we are clear, you want me to put in
23 those modifications from 8(G)(3)(a); right?

24 CHAIRWOMAN SANDOVAL: Hold on.

25 COMMISSIONER KESSLER: Yes.

1 CHAIRWOMAN SANDOVAL: I think so. Should we add
2 something that says vented as a result of normal operations
3 of -- either we make it more broad like we did earlier and
4 say vented in the normal -- as a result of normal operations
5 of equipment, or we say vented as a result of normal
6 operations of pneumatic controllers, pumps, flanges,
7 connectors. I --

8 COMMISSIONER KESSLER: Specificity here would be
9 helpful.

10 CHAIRWOMAN SANDOVAL: Okay.

11 COMMISSIONER KESSLER: Is that what you were
12 going to say?

13 CHAIRWOMAN SANDOVAL: Sort of, but I can be
14 convinced otherwise.

15 COMMISSIONER KESSLER: Again, not wanting the
16 rule to be swallowed.

17 CHAIRWOMAN SANDOVAL: Okay. So, Mr. Moander,
18 maybe to start with, can you put the Division's proposed
19 language in there. Is that what that is?

20 MR. MOANDER: Yes.

21 CHAIRWOMAN SANDOVAL: Then we can modify it from
22 here. All right. Dr. Engler, do you see where we are
23 going?

24 COMMISSIONER ENGLER: Yeah, I see this. So the
25 statement is referenced in Subparagraph (i).

1 CHAIRWOMAN SANDOVAL: Right.

2 COMMISSIONER ENGLER: So are you changing (i) to
3 a subset --

4 CHAIRWOMAN SANDOVAL: No, not (i), but I think we
5 need to include normal -- because we added the valves,
6 flanges and connectors piece, I think we also need to
7 specify here, vented as a result of normal operations like
8 pneumatic controllers and pumps, and valves, flanges or
9 connectors.

10 COMMISSIONER ENGLER: That would be -- these are
11 items that would be excluded?

12 CHAIRWOMAN SANDOVAL: Yes, because they are
13 normal operations. But since the original -- that's how
14 it's worded in the Division's rule, it's not here, so I
15 think it needs to be inclusive in here.

16 COMMISSIONER ENGLER: So do you see any valve,
17 flanges under (2)(m) in other waste?

18 CHAIRWOMAN SANDOVAL: No. I think they are now
19 falling under -- which one did we change? -- (b),
20 non-scheduled maintenance, malfunction or -- what was -- how
21 did we rewrite (b), Mr. Moander?

22 MR. MOANDER: So which (b).

23 CHAIRWOMAN SANDOVAL: (G)(2)(b)

24 MR. MOANDER: (G)(2)(b), including abnormal
25 operation of equipment.

1 COMMISSIONER KESSLER: We might have to --

2 CHAIRWOMAN SANDOVAL: We kept it broad there.

3 COMMISSIONER KESSLER: We might have to keep it
4 broad here, too. I think if we kept it -- I think that we
5 have to echo that language.

6 CHAIRWOMAN SANDOVAL: So instead it would be in
7 the new language for 8(G)(3)(a), it would be vented as a
8 result of normal operations of equipment?

9 COMMISSIONER ENGLER: That's does not -- that's
10 not consistent with Subparagraph (i). So if you want to go
11 back to (i), you would have to say --

12 CHAIRWOMAN SANDOVAL: Which one is (i)?

13 COMMISSIONER ENGLER: That's pneumatic
14 controllers and pumps.

15 CHAIRWOMAN SANDOVAL: No, I think we need to
16 specifically call those out. I don't want to --

17 COMMISSIONER ENGLER: This section, this
18 8(G)(3)(a), it's definitely volume loss, but giving you an
19 exclusion such that you don't have to calculate it. You
20 don't have to use it in your two percent.

21 So the normal operations is pneumatic controllers
22 and pumps is specifically in this edition that OCD
23 identified. If you want to go through all normal operations
24 of equipment, that's fine, but it's got defined --

25 CHAIRWOMAN SANDOVAL: No, I think you are making

1 a good point. Wait. No, maybe I'm --

2 COMMISSIONER ENGLER: If you wanted to consider
3 waste as included as volume loss in the two percent, then
4 that would be not what you want here because this is
5 exclusion.

6 CHAIRWOMAN SANDOVAL: Well, but okay, is this
7 even right anymore because we are saying normal operations?

8 COMMISSIONER KESSLER: That could be --

9 CHAIRWOMAN SANDOVAL: Hold on two seconds, guys.
10 (Pause.)

11 MR. MOANDER: Did we lose everybody?

12 CHAIRWOMAN SANDOVAL: Just for a moment. Food is
13 here, and we have to grab it from outside.

14 So actually I'm looking at this, and didn't we
15 decide that normal operations of pneumatic controllers is on
16 lease gas use and therefore beneficial use. So I'm not sure
17 why it needs to be called out in general because I think
18 that whole piece could be subtracted eventually because it
19 would fall under the use for beneficial use for pneumatics.

20 COMMISSIONER ENGLER: Well, I think the -- I
21 think what the Division is doing is they want to tie, you
22 know, Part (2), which is all the (a) through (m), and to
23 identify those parts that you are reporting that will be
24 removed. So they will be moved from the calculated loss.

25 So if you want to say pneumatic controllers are

1 normal operations are part of beneficial use, I think then
2 we are going to have to modify above so everyone knows where
3 it's going. Does that make sense? Because I think the
4 Division is quite correctly trying to tie in (2) and (3) to
5 so on. So if we modify this, we need to be careful of how
6 it's going to be drafted.

7 CHAIRWOMAN SANDOVAL: I mean, there is no section
8 in (2) that says gas -- is there a beneficial use category
9 in here at all?

10 COMMISSIONER ENGLER: No. That's up to the
11 operator and what they are using.

12 CHAIRWOMAN SANDOVAL: It's not reported, it's
13 just in the equation?

14 COMMISSIONER ENGLER: Well, they have to -- yes.
15 They have two categories, they need that volume use for
16 beneficial use. That line -- so somewhere, maybe you're
17 right, maybe there is no -- nothing that's defined
18 beneficial use here, it goes to right now the interpretation
19 of the operator what that would include.

20 CHAIRWOMAN SANDOVAL: And maybe that's something
21 for a guidance document down the road?

22 COMMISSIONER ENGLER: Maybe. I know, again what
23 I see here is the way the Division says above here in (2),
24 how that gets managed to get --

25 CHAIRWOMAN SANDOVAL: Right, understood. But

1 what we have said extensively yesterday is that on these gas
2 use, that is a beneficial use unless it's malfunctioning,
3 and then we don't need -- in my mind we don't need that
4 entire section that talks about vented as a result of normal
5 operations that because that would be calculated in the
6 beneficial use bucket up above.

7 COMMISSIONER ENGLER: Yes, that would be correct.
8 You would eliminate (i) in this list.

9 CHAIRWOMAN SANDOVAL: I don't think we eliminate
10 (i) in this list. I'm talking about 8(G)(3)(a), I don't
11 think we would eliminate (i).

12 COMMISSIONER ENGLER: Well, if it's beneficial
13 use, why should it be here in the reporting as vented and
14 flared.

15 CHAIRWOMAN SANDOVAL: Because don't we need to
16 understand what on earth is going into beneficial use
17 instead of like a made-up number we can't validate?

18 COMMISSIONER ENGLER: That's true. There is
19 nothing in here -- you are going to have to define
20 beneficial use somewhere.

21 CHAIRWOMAN SANDOVAL: Beneficial use is in here.
22 I'm looking for an example, beneficial use could be blah,
23 blah, blah, blah, blah, blah, blah. I'm sure it's going to
24 look great on the transcript.

25 Okay, if you go to the accounting sort of the 9,

1 9(B)(5), it does talk about the Division to evaluate the
2 potential alternatives, beneficial use, including (unclear)
3 other alternatives as approved by Division, and I would say
4 use of pneumatic controller, and maybe we can add that into
5 that list, but --

6 COMMISSIONER ENGLER: Think (b) is the
7 alternative -- that's standard with regards to (unclear)

8 CHAIRWOMAN SANDOVAL: So then do we need to just
9 add another category that's called other alternative -- or
10 other beneficial use? Because I don't -- I think pneumatic
11 should be reported separately since there is no other way as
12 we talked about yesterday to ever understand what the
13 magnitude of that use is.

14 COMMISSIONER ENGLER: Yeah, well, again, that
15 would be checked in (i) as the category list reports, and
16 again, if that's -- it's all about the arrangement, because
17 I think what the Division has here is appropriate.

18 So instead of accounting pneumatic as beneficial
19 use, it should be separately called out, that way you would
20 see that magnitude. Again, if this is normal operations,
21 you are to separate out and exclude it from the line
22 (unclear).

23 CHAIRWOMAN SANDOVAL: I'm fine doing that, but we
24 are going to have to add -- it is going to have to say
25 something like, vented as a result of normal operations of

1 pneumatic controllers and pumps. Or vented as a result of
2 normal operations of equipment because we added in a new
3 category for now, right?

4 COMMISSIONER ENGLER: Well, we added the under
5 malfunction and normal operations; right?

6 CHAIRWOMAN SANDOVAL: Right. Oh, okay. Okay.

7 COMMISSIONER ENGLER: Because we don't have
8 anything specifically in (G)(2) for normal operations.

9 CHAIRWOMAN SANDOVAL: Because they are not
10 used -- no, I see -- I -- just a second. I'm not using
11 any (unclear) okay. Then it makes sense. So as is, so we
12 keep that one.

13 COMMISSIONER KESSLER: That's good.

14 CHAIRWOMAN SANDOVAL: All right. What about the
15 NMOGA has different language? Would it be better to look at
16 the Division's 8(2) (unclear)?

17 COMMISSIONER ENGLER: Yeah, I --

18 CHAIRWOMAN SANDOVAL: Okay. So let's look at the
19 Division's (B).

20 COMMISSIONER KESSLER: I'd have to say this was a
21 non-technical person, the way that they present the formula
22 is a little bit better, not necessarily the description
23 itself (unclear) formula that we need to follow, but, you
24 know, maybe other people are going to be looking at this
25 rule and understand it better.

1 CHAIRWOMAN SANDOVAL: I think it makes it clear.

2 COMMISSIONER ENGLER: Well, yeah, I would -- I
3 like the equation form better.

4 CHAIRWOMAN SANDOVAL: (Unclear) what NMOGA is
5 proposing.

6 COMMISSIONER ENGLER: Well, I don't -- I would go
7 with, actually go with that rule. I think, Commissioner
8 Kessler, you understand that they cannot (unclear).

9 COMMISSIONER KESSLER: I don't think it says
10 anything different, it just presents it a little bit
11 differently.

12 COMMISSIONER ENGLER: Yeah.

13 COMMISSIONER KESSLER: I'm fine with --

14 COMMISSIONER ENGLER: With NMOGA's --

15 COMMISSIONER KESSLER: It's just --

16 CHAIRWOMAN SANDOVAL: I don't see.

17 COMMISSIONER KESSLER: I don't see the benefit of
18 NMOGA's proposal about what Division did in their
19 alternative.

20 COMMISSIONER ENGLER: This is defining for either
21 (unclear) this one actually defines the statute, so one or
22 the other.

23 CHAIRWOMAN SANDOVAL: Okay. I think the
24 Division's proposal makes more sense. It makes it clear.
25 Okay.

1 COMMISSIONER KESSLER: Yes.

2 MR. MOANDER: Sorry. To recap to Section (3)(a)
3 as provided per the supplement by the Division, as well as
4 Subsection (b) are acceptable as they stand now?

5 COMMISSIONER KESSLER: Yes.

6 CHAIRWOMAN SANDOVAL: Yes.

7 COMMISSIONER ENGLER: Yes.

8 CHAIRWOMAN SANDOVAL: All right, (4). We would
9 need to change the date. Would it be, instead of March, now
10 it would be -- I say March doesn't even make -- no, March
11 would make sense because originally it was coming in
12 February, the day was coming in February so they started in
13 March, so now --

14 COMMISSIONER KESSLER: This section again,
15 they're talking about referring notifying -- reporting to
16 royalty owners, that the owner -- does the owner have
17 (unclear) to access that. I wonder if we could take this
18 after lunch because I, I have issues with the way the
19 Division has this drafted.

20 CHAIRWOMAN SANDOVAL: Okay. NMOGA has something
21 a little different, too.

22 COMMISSIONER KESSLER: Yeah, remember this was
23 the issue of whether or not you have the requirement to
24 report (unclear).

25 CHAIRWOMAN SANDOVAL: Yeah. Okay. You want to

1 come back at 12:35 or 12:40?

2 COMMISSIONER ENGLER: 12:40 we will be back.

3 (Lunch recess taken.)

4 CHAIRWOMAN SANDOVAL: Let's briefly discuss
5 schedule. I think my inclination is, well, one, I think a
6 lot of the stuff that's exactly duplicated in Part 28,
7 either Ms. Orth or Mr. Moander, are we able to say, well, we
8 had that discussion on Part 27. The situation is not
9 substantially different in Part 28, and therefore that
10 change should apply here, and not have to re-discuss
11 everything?

12 MR. MOANDER: One second. I've got a mouthful
13 here, so just one moment, please. Okay. Can you give me a
14 fairly straightforward example, if you can.

15 CHAIRWOMAN SANDOVAL: I think almost everything
16 we have discussed so far, except for maybe a couple of
17 definitions, a lot of the reporting categories are exactly
18 the same.

19 The oxygen issue was the same. Predominantly a
20 lot of the changes in 27 are duplicated in Part 28, and the
21 differences in facility types does not necessitate any sort
22 of change and the discussion that we had previously would
23 apply.

24 There are a couple of different examples like the
25 location requirements and the plans are a little bit

1 different, so (unclear) we would obviously have to
2 deliberate on, but on the places that are exactly the same
3 and we make, you know, sort of the broad statement, but
4 that's exactly the same as 27, the justification we already
5 discussed in Part 27 does not necessitate any sort of
6 different --

7 MR. MOANDER: The short answer is I think some of
8 that is doable. The long answer is the risk that gets run
9 here is that if something, if something, one, gets
10 overlooked, which is always a risk. But, two, if we are not
11 clear on the evidence for each change, or, alternatively,
12 let's just say I am preparing the Commission's statement
13 that I discover that the portions of the transcript
14 discussed don't match with the purported change, that could
15 put Commission into a pickle.

16 Two, I am leery of trying to fast track anything
17 because of procedural guardrails. Let me check on something
18 and I can get you an answer back here momentarily. Let me
19 just take a look at some things, but I will be right back on
20 that topic, but I'm also listening.

21 CHAIRWOMAN SANDOVAL: What our intent would be is
22 we could say, Section 9.A, we discussed that in Part 27.
23 It's the exact same here. Situations in the transcript,
24 blah, blah, don't make any change, I think that --

25 MR. MOANDER: And I understand what you are

1 saying. I'm not disagreeing with you about it, but I want
2 make sure that in doing that it doesn't run the risk of
3 invalidating any changes that fall underneath that approach.
4 So just one second here.

5 HEARING EXAMINER ORTH: Madam Chair, my
6 understanding from the case law in New Mexico is that so
7 long as the reviewing body, such as the Court of Appeals,
8 for example, can discern from the record the basis for your
9 decisions. And then the other factor -- and I think what
10 you've described would allow them to discern the basis for
11 your decision -- and then the other factor that Mr. Moander
12 just mentioned obviously is he needs to have enough from you
13 in order to draft the statement of reason. So I think there
14 wouldn't be concerns for me beyond those two things.

15 CHAIRWOMAN SANDOVAL: Okay. So that's really
16 helpful. Thank you.

17 And then the second question is, particularly for
18 Irene. Do you have any schedule limitations for going into
19 the evening, assuming we take a break?

20 (Discussion with court reporter.)

21 CHAIRWOMAN SANDOVAL: I think at this point we
22 are open to going into the evening.

23 COMMISSIONER KESSLER: But we would take a break
24 for preferably an hour.

25 CHAIRWOMAN SANDOVAL: Yes, thank you. And with

1 that, let's go back to 8 -- is it G(4)?

2 COMMISSIONER KESSLER: (4).

3 CHAIRWOMAN SANDOVAL: So I've had some real
4 concerns about this provision from the outset. And I think
5 the Division did a great job of attempting to address them,
6 but my concern really would be about what happens from an
7 operator's perspective when they are attempting to notify
8 royalty interest owners different from the State Land Office
9 because of the major fractioning of ownership, on the one
10 hand, in New Mexico for royalty owners, and second of all,
11 on the other hand, the lack of understanding, I think, about
12 the contractual nature of how operators, working interest
13 owners, royalty owners work in formulation of a spacing unit
14 and making (unclear).

15 So the provision that the Land Office -- that the
16 Division suggested for notification on a monthly basis of
17 royalty owners (unclear) in reviewing it, there, there is
18 some protection against waste, but I don't think that that
19 protection outweighs the really incredibly burden that would
20 be added to operators' reporting requirements given the fact
21 that it is all available online for royalty owners or for
22 any type of owner to be able to pull.

23 So what I would suggest is, I think the NMOGA's
24 proposal specifies providing a copy of the C-115B to the
25 land office. What I would actually add to this is providing

1 the notification to the royalty owners at the outset, so one
2 time notification that the information is available online.
3 And that would allow those royalty owners to be able to
4 access -- you know, provide them the knowledge that here is
5 where you access the data if they are so inclined to look it
6 up. It's available anyways, so this is putting them on
7 notice that that's how they get it, and I think that would
8 provide some of the protection with this.

9 COMMISSIONER ENGLER: So your change would be, to
10 say again, would be before.

11 COMMISSIONER KESSLER: Before.

12 COMMISSIONER ENGLER: To be notify royalty owners
13 initially?

14 COMMISSIONER KESSLER: If that's what Commission
15 members also agree with, I'm fine with just the draft that
16 NMOGA proposed (unclear) concerns from other Commission
17 members, I would propose, the Land Office would potentially
18 propose a one time notice on how to access that.

19 COMMISSIONER ENGLER: What's NMOGA's proposal?

20 COMMISSIONER KESSLER: Basically the same date
21 the operator, rather than providing everybody, all of the
22 owners a copy of the C-115B, just providing the land office
23 a copy of the C-115B.

24 CHAIRWOMAN SANDOVAL: I can understand the
25 concern. I think, at a minimum, we should go with the NMOGA

1 proposal. My concern is, as user friendly as the OCD
2 website is, it can be -- as user friendly as the OCD has
3 tried to make it that resources are available, it is still a
4 challenge for most. So I would be interested in talking
5 about that one-time notification that explains where and how
6 to access it.

7 COMMISSIONER KESSLER: Okay.

8 CHAIRWOMAN SANDOVAL: Dr. Engler?

9 COMMISSIONER ENGLER: So that one-time
10 notification should be at the time that the stated regular
11 scheduled time that the -- the owner -- let me rephrase
12 that part. Do you want to tell it one time to go to
13 initially to all royalty owners separate from the financial
14 side, or just wait until whatever the first time is that you
15 send the royalty owner a check or whoever it is, that would
16 be the notification tied to that?

17 COMMISSIONER KESSLER: You could just say that
18 time filing -- the initial filing of the C-115B. So the
19 first C-115B sets up operator files. At that time,
20 information would also have to be sent to the royalty owners
21 so that they are able to track it right from the beginning.
22 So they know their rights right from the beginning and are
23 able to track from the beginning.

24 COMMISSIONER ENGLER: So it would be a separate
25 notification from the financial for the --

1 COMMISSIONER KESSLER: I think that's right,
2 because I don't think that -- I think there is a
3 misunderstanding about how -- how and who the pays the
4 royalty owners. And so, yes, it would be when the operator
5 has to file their initial C-115B, that gives everyone timely
6 notice on how to track it, and you know, it's something of a
7 burden on the operator if they still have to figure out how
8 to get in touch with the royalty owners, but it's not, it's
9 not as onerous as --

10 CHAIRWOMAN: But you still do want the language
11 from NMOGA that does notify the State Land Office?

12 COMMISSIONER KESSLER: Yeah, I mean, as
13 Mr. Smitherman stated, I don't think that's an issue at all.

14 CHAIRWOMAN SANDOVAL: okay.

15 COMMISSIONER ENGLER: Isn't there a -- you know,
16 State Land Office is, one, is a major interest owner, and
17 two is, it has an entire system in place for audit. So
18 doesn't the State Land Office have means already to get this
19 information?

20 It's not as straightforward as you think for
21 dealing with the process. So the C-115 automatically goes
22 to the State Land Office for processing and for -- I should
23 say, information from the C-115 enters into our data
24 processing, and so we are not getting the actual form.

25 COMMISSIONER ENGLER: But you are getting the

1 data?

2 COMMISSIONER KESSLER: But we are getting the
3 data we need.

4 COMMISSIONER ENGLER: So the C-115B would also be
5 data that you would need that you could get.

6 COMMISSIONER KESSLER: It is data that we need
7 and the timing is an issue on that. So I think the
8 operators, if we, the Land Office, received the C-115Bs, the
9 Land Office would have a better chance of being able to
10 receive or audit it, especially given the concerns that the
11 Land Office has with basically fill this out, our system
12 will be able to see that C-115B. The timing of that is
13 just, you know, absolutely serious.

14 COMMISSIONER ENGLER: Well, okay. I do think we
15 should test we are on the right track about simplifying this
16 problem. Again, I think it was the tendency to think of
17 this rule for in terms of someone like the State Land Office
18 who would have a huge interest plus a team to be able to
19 evaluate. There are so many splits of royalty owners and
20 contracts out there and timing, which I think you all
21 mentioned was a complication.

22 I have a really, first, philosophical question
23 here. Why, why even the purpose of this from the Division
24 in the first place to notify royalty owners?

25 COMMISSIONER KESSLER: The purpose, I think, was

1 to exert pressure from the royalty owner to the operator
2 essentially to flare rather than waste gas because they are
3 going to have eyes on it. The more eyes on it, then
4 potentially the more constituencies to be able to tell the
5 operator that they need to do a better job.

6 COMMISSIONER ENGLER: That's kind of how I was
7 taking this, and I thought that's -- let's see, how should I
8 put this -- I find that rather disturbing.

9 CHAIRWOMAN SANDOVAL: Because actually, North
10 Dakota, their flaring rule actually came about because
11 royalty owners freaked about all the money they were losing.
12 And Colorado, same situation, it's a pretty common scenario
13 there where the royalty interest owners have (unclear) and
14 so it's not as --

15 COMMISSIONER ENGLER: But were they notified and
16 rolled into that, or did the royalty owners of their own
17 volition --

18 CHAIRWOMAN SANDOVAL: I think the testimony was
19 Colorado was required to do it.

20 COMMISSIONER KESSLER: Yes, there was testimony
21 that another state, I can't remember, I think it was
22 Colorado.

23 CHAIRWOMAN SANDOVAL: Colorado.

24 COMMISSIONER KESSLER: And maybe ownership is
25 different. I mean I would say that. I think land ownership

1 varies significantly by state. And certainly all royalty
2 owners are like the Land Office where they had no (unclear)
3 and you notified one royalty owner, and that was the end of
4 it, then I would support this provision. But I think that
5 the level of burden that, as to operators, is just
6 inconceivable. If you think about the fact that they are
7 reporting on this by individual owner.

8 COMMISSIONER ENGLER: So are we keeping -- so I
9 know they have this filing. Does that mean they are still
10 going to have report to the owner, mineral state owners on a
11 monthly basis?

12 COMMISSIONER KESSLER: What I would suggest --
13 what I would propose is that for the, as follows: Beginning
14 now, June 22 --

15 CHAIRWOMAN SANDOVAL: June of 2022.

16 COMMISSIONER KESSLER: June of 2022, the operator
17 shall provide a copy of the C-115B to the New Mexico State
18 Land Office for a well or facility in which the state owns a
19 royalty interest, provided that --

20 MR. MOANDER: Commissioner Kessler, let's try
21 that again. Just to be clear, we are not adding this as a
22 subsection, this is going to be incorporated into (4)
23 itself; right?

24 COMMISSIONER KESSLER: It replaces all of
25 language of (4)(f). What I just read was just the NMOGA

1 proposal, so if you have that in front of you --

2 MR. MOANDER: I've got that in front of me.

3 COMMISSIONER KESSLER: Yeah.

4 MR. MOANDER: I will put that in.

5 COMMISSIONER KESSLER: And then we want to add --

6 MR. MOANDER: One second please, okay.

7 COMMISSIONER KESSLER: This I am making up so --
8 provided that the operator shall notify all royalty interest
9 owners of their ability to obtain the information from the
10 Division's website at the time the initial C-115B is filed.
11 Now let me look at that and see if --

12 MR. MOANDER: Let me get this off.

13 COMMISSIONER KESSLER: I think that's okay.

14 HEARING EXAMINER ORTH: Sorry, Madam Chair, the
15 word, the second word operator there right before the word
16 abilities, that doesn't belong there.

17 MR. MOANDER: I misunderstood. This would be the
18 royalty interest owner?

19 COMMISSIONER KESSLER: Yes. Right after
20 operators will notify all royalty interest owners of the
21 ability to obtain information through the Division's website
22 at the time the initial C-115 is filed. i think that makes
23 sense.

24 CHAIRWOMAN SANDOVAL: Can you go back? Sorry.

25 MR. MOANDER: Tell me where you would like to

1 pick up.

2 CHAIRWOMAN SANDOVAL: Yeah, there. I guess I'm
3 confused by the statement provided that, I don't understand
4 that transition. Like what are they supposed to do?

5 MR. MOANDER: It reads as if the operator --
6 yeah --

7 CHAIRWOMAN SANDOVAL: I get that part. I don't
8 get the transition, like what --

9 COMMISSIONER KESSLER: It's just --

10 HEARING OFFICER ORTH: Or you could just use the
11 word and instead of provided that the operator shall.

12 CHAIRWOMAN SANDOVAL: Or that. That's good. Can
13 you go back? Okay. Okay. That works. Thank you, Ms.
14 Orth.

15 MR. MOANDER: Just a point of procedure here. I
16 checked from the case law, and surprisingly Ms. Orth is
17 right about the adoption of changes. So let's talk about
18 that when we have just a minute that we can dedicate to it
19 to make sure we have a plan in place for that.

20 COMMISSIONER KESSLER: Okay. This language that
21 we included accurately accounts for my concerns, and also I
22 think the testimony of NMOGA and OCD as well. This looks
23 good to me. I don't know about the rest of you.

24 CHAIRWOMAN SANDOVAL: I am good with it. I think
25 I think it balances a little bit of everything. I know the

1 State Land Office submitted testimony, so this is important,
2 and I can understand the nuances of State and the
3 challenges, so I think this is a very logical balance and I
4 support.

5 COMMISSIONER ENGLER: I don't like it at all. So
6 I think that Commissioner Kessler has done a great job of
7 approving the form, so we will leave it at is. But on the
8 record, I don't like the form at all.

9 CHAIRWOMAN SANDOVAL: Is this something we need
10 to vote on? Just a procedural question.

11 MR. MOANDER: I mean, votes never hurt, they
12 rarely do. In this instance, I would -- because there is
13 such a staunch objection to it, I think now is the time to
14 make a quick record for that.

15 COMMISSIONER ENGLER: Let's do that.

16 COMMISSIONER KESSLER: I make a motion to include
17 the language that I just transcribed in Section
18 19.15.27.8.B(4) as amended.

19 CHAIRWOMAN SANDOVAL: I second that motion. Mr.
20 Moander, would you please do a roll call vote from the
21 Commission.

22 MR. MOANDER: Commissioner Kessler?

23 COMMISSIONER KESSLER: Approve.

24 MR. MOANDER: Commissioner Engler?

25 COMMISSIONER ENGLER: No.

1 MR. MOANDER: Chair Sandoval.

2 CHAIRWOMAN SANDOVAL: I approve.

3 MR. MOANDER: The motion passes.

4 (Motion passed unanimously.)

5 CHAIRWOMAN SANDOVAL: All right. We are into
6 Part 9.

7 COMMISSIONER ENGLER: No. (5).

8 CHAIRWOMAN SANDOVAL: What?

9 COMMISSIONER KESSLER: Oh, yes.

10 CHAIRWOMAN SANDOVAL: Oh, (5). That was just
11 moved to a section later in Part 9.

12 COMMISSIONER ENGLER: I agree.

13 CHAIRWOMAN SANDOVAL: So we agree with (5)
14 removal.

15 COMMISSIONER ENGLER: Unless you want me to
16 object and do a roll call.

17 CHAIRWOMAN SANDOVAL: That takes time.

18 COMMISSIONER KESSLER: I have (unclear).

19 COMMISSIONER ENGLER: Let's go.

20 CHAIRWOMAN SANDOVAL: Now we're in 9.

21 Okay, 9 -- let's see -- (B) we just as a note
22 here -- 9(B) is in the additional documentation, so we just
23 need to recall that. But 9(A), let's do that.

24 COMMISSIONER KESSLER: Okay. 9(A) does not have
25 proposed changes from Climate Advocates or NMOGA. The

1 Division -- am I reading this -- it looks like the Division
2 changed monthly reporting to quarterly reporting and added
3 some clarifying language. I think that the language sets
4 out sort of identifying what's required of the provision, so
5 I support the Division's proposed changes.

6 CHAIRWOMAN SANDOVAL: Do we need to account in
7 this section anything for the 9-12, the three-quarter thing
8 we talked with about? Is it here that we do it?

9 COMMISSIONER ENGLER: Yes, if we agree with that
10 concept.

11 COMMISSIONER KESSLER: I think it's in the other
12 accounting, just like the first paragraph of accounting.

13 CHAIRWOMAN SANDOVAL: Ms. Orth or Mr. Moander, do
14 you have any input on that. Do you see what we are asking?

15 MR. MOANDER: So are you asking if the
16 commencement date of January 1, 2022, should be pushed back?
17 Is that the issue in this? And if so, by how long.

18 CHAIRWOMAN SANDOVAL: It's not exactly that. We
19 talked about it yesterday. Since we are cutting their time
20 to nine months to get into compliance, the first year they
21 only have to comply with 9-12 of that, but the second year
22 they have to get all the way there.

23 MR. MOANDER: Yes. Because then that would be --

24 CHAIRWOMAN SANDOVAL: Does that go here or go in
25 accounting? Maybe let's just keep talking about this and

1 you can --

2 COMMISSIONER ENGLER: It does it in (A) last
3 paragraph, that talks about each calendar year or so, about
4 the gas capture. So it's probably (unclear) in that first
5 year (unclear).

6 CHAIRWOMAN SANDOVAL: So in (A)(4)?

7 COMMISSIONER ENGLER: Yeah, in (unclear).

8 CHAIRWOMAN SANDOVAL: You mean at the end of (A)?

9 COMMISSIONER ENGLER: You are describing all your
10 reporting time lines.

11 CHAIRWOMAN SANDOVAL: So probably here. Okay.
12 So first off, it needs to be commencing April 1, 2022, and
13 that is to comply -- or to have align with the reporting
14 time frame change.

15 MR. MOANDER: This change shouldn't be reflecting
16 December 2026; right?

17 CHAIRWOMAN SANDOVAL: No.

18 MR. MOANDER: So in this instance we need to
19 change this January to April as well to make that
20 consistent?

21 CHAIRWOMAN SANDOVAL: No, no. Hold on.

22 MR. MOANDER: Oh, no, you're right. In each
23 calendar year.

24 CHAIRWOMAN SANDOVAL: Yeah, let's get there.

25 COMMISSIONER ENGLER: In the middle there it says

1 operators 2021 for quarterly reporting. Instead of 2021 it
2 should be 2022 for Paragraph 2.

3 CHAIRWOMAN SANDOVAL: Yes. So, Chris, the
4 Division shall populate and publish each operator's
5 baseline. Are you there?

6 MR. MOANDER: Baseline --

7 CHAIRWOMAN SANDOVAL: -- flaring natural gas
8 capture rate dates on the operator's fourth quarter 2021 and
9 first quarter 2022 quarterly report?

10 MR. MOANDER: Quarterly reports, yeah, that
11 matches the section earlier we discussed. I think that's
12 right.

13 CHAIRWOMAN SANDOVAL: Should we add the caveat
14 here, the Division shall populate and publish on the
15 Division's website -- I think you're there -- earlier that
16 sentence that you just modified, it can be, and the Division
17 shall populate and publish on the Division's website each
18 operator's.

19 MR. MOANDER: New paragraph?

20 CHAIRWOMAN SANDOVAL: Yeah, perfect.

21 MR. MOANDER: That should tie that up then
22 because I think that's consistent.

23 CHAIRWOMAN SANDOVAL: Yes. So then we cleaned
24 that piece up. And I think we add the caveat at the very
25 end here. Perfect.

1 MR. MOANDER: How do we want to phrase that?

2 COMMISSIONER ENGLER: In the first calendar year
3 of 2022 the operator may capture 75 percent of the baseline
4 rate or baseline rate shown. I think we've have got --
5 (unclear) we don't want to -- we're allowing them the
6 tolerance of three-quarters of a year, but if they can do
7 more they should do more.

8 COMMISSIONER KESSLER: At least.

9 COMMISSIONER ENGLER: At least, yes.

10 MR. MOANDER: At least or no less than.

11 COMMISSIONER ENGLER: Something that says that,
12 you know, to be in compliance, because, you know, an
13 operator will make --

14 CHAIRWOMAN SANDOVAL: I like no less than.

15 COMMISSIONER ENGLER: -- 75 percent of their
16 annual natural gas capture requirement. 75 percent of their
17 annual gas capture percent to be in compliance. I think
18 that will capture that.

19 COMMISSIONER KESSLER: But then you need to -- I
20 think that's a good sentence, also we need to add something
21 to make up that extra quarter.

22 COMMISSIONER ENGLER: Oh yeah, okay. I think the
23 other thing -- what do you think, from the very beginning it
24 says in the first calendar year, it should say only in the
25 first calendar year, so that they understand this is only a

1 one-time deal.

2 CHAIRWOMAN SANDOVAL: Yeah.

3 MR. MOANDER: Yes.

4 COMMISSIONER ENGLER: You are only getting this
5 because of the fact that we are not doing a full year. And
6 then, Commissioner Kessler --

7 COMMISSIONER KESSLER: So we need to make up that
8 extra 25 percent for the following calendar year, so we just
9 need to draft language for that.

10 COMMISSIONER ENGLER: Yeah.

11 CHAIRWOMAN SANDOVAL: Maybe we just say in -- or
12 during -- or in calendar year 2023 operators must be -- or
13 must meet -- or must be in full compliance with required
14 annual natural gas capture percentage.

15 Ms. Orth, we may need some fresh eyes. Does that
16 make sense to you?

17 HEARING EXAMINER ORTH: Give me a sec here,
18 sorry. Yes.

19 CHAIRWOMAN SANDOVAL: Okay. Okay. I like it.

20 COMMISSIONER KESSLER: So is the next
21 section (unclear).

22 CHAIRWOMAN SANDOVAL: Right. There are no
23 changes throughout the entire Section (A). Let's do (3).

24 COMMISSIONER KESSLER: Yes.

25 CHAIRWOMAN SANDOVAL: I'm fine with that. I

1 think, you know, it balances the need for some flexibility
2 while not allowing this to sort of -- I think it also aligns
3 similarly with how the Division manages inactive wells and
4 that practice when an operator acquires another company, and
5 so I think it aligns with the OCD's current practices.

6 COMMISSIONER ENGLER: If an operator disposes of
7 wells, do they get the same position?

8 CHAIRWOMAN SANDOVAL: Like --

9 COMMISSIONER ENGLER: Well, that would be --

10 CHAIRWOMAN SANDOVAL: I mean, no, I don't think
11 so.

12 COMMISSIONER ENGLER: I guess I don't understand
13 it.

14 CHAIRWOMAN SANDOVAL: Let me just see how it
15 works with inactive wells, and this may help.

16 So with inactive wells, you can only have, say if
17 you have over 1,000 wells, you can only have ten inactive
18 wells per the operator. Operator, Company A, currently has
19 nine inactive wells, and they're in compliance with the
20 rules.

21 Then they go and acquire Company B. Because they
22 are already over 1,000 wells, they can still only have 10
23 inactive wells, they acquire Company B who has 1,000 more
24 wells and another nine inactive wells. So all of a sudden,
25 overnight, they are now out of compliance because they have

1 an extra eight inactive wells.

2 So then the Division will enter into some sort of
3 legally binding agreement with that company that says you
4 have to bring these eight wells on line or close them within
5 X time frame.

6 COMMISSIONER ENGLER: There is nothing in (3)
7 that talks about inactive wells.

8 CHAIRWOMAN SANDOVAL: Right. I'm just -- this
9 process, in my mind, is analogous to how the, how the
10 Division currently manages inactive wells. Inactive wells
11 has nothing to do with this other than this, in my mind, is
12 the exact same process.

13 If a company acquires another company who's
14 totally failing their gas capture percentage, okay -- let me
15 change it. Company A attained gas capture percentage.
16 Company B, not meeting gas capture percentage, totally out
17 of compliance, Company A acquires Company B. And now they
18 are supposed to be meeting 95 gas capture at that time,
19 Company B drags them down to 93 percent, so they are now out
20 of compliance.

21 What this allows is for that operator, within 60
22 days of the acquisition, Operator A, who now overnight is
23 out of compliance, to go and meet with the Division and say
24 we need six months to fix all of Company B's problems and
25 bring ourselves into compliance.

1 COMMISSIONER ENGLER: Right. In your example
2 Company B maybe has transferred, you know, uncompliant wells
3 to Company A, and wouldn't that Company B then have the
4 ability to also say I have a new capture plan?

5 COMMISSIONER KESSLER: I think it does cut both
6 directions. And what I would propose is very simple, which
7 is to say, an operator's acquisition or sale of one or more
8 wells from another operator shall not affect it's annual gas
9 capture requirements.

10 I think it's somewhat implicit that the problem
11 is going to come with acquisition rather than sales, so why
12 not just say it, you always have to be in compliance with
13 the natural gas capture rate.

14 CHAIRWOMAN SANDOVAL: I'm fine with that.

15 COMMISSIONER ENGLER: On both sides?

16 COMMISSIONER KESSLER: On both sides.

17 COMMISSIONER ENGLER: And it also needs to say,
18 based on acquisition or sales -- for good cause based on its
19 acquisition.

20 COMMISSIONER KESSLER: Or sales.

21 COMMISSIONER ENGLER: Or sales.

22 CHAIRWOMAN SANDOVAL: The end of the second
23 (unclear) okay. I think the date on Number (4), I think the
24 date of March 30 actually is okay.

25 MR. MOANDER: I agree. I don't think it needs

1 modified.

2 COMMISSIONER KESSLER: I agree.

3 CHAIRWOMAN SANDOVAL: I agree with the changes
4 from NMOGA -- oh, wait. Hold on.

5 COMMISSIONER KESSLER: I think this paragraph
6 doesn't make sense outlining the Division's intentions to
7 (unclear) noncompliance in -- essentially that's within the
8 Division's parameter to do. So it doesn't have to be
9 immediately, you know, take action against the operators.
10 They can use different approaches, and so I think -- I
11 agree, I think that this is outlining what the Division can
12 and should do, and (unclear) for modification.

13 CHAIRWOMAN SANDOVAL: I agree. I think there was
14 testimony, too, for why that really is important.

15 COMMISSIONER KESSLER: Yeah.

16 COMMISSIONER ENGLER: Correct.

17 CHAIRWOMAN SANDOVAL: (C), which we probably need
18 to look at the additional document.

19 COMMISSIONER KESSLER: Yeah, this makes it a lot
20 easier to follow the language, and referencing the
21 categories that are appropriate for discussion, it's a lot
22 easier to follow it.

23 CHAIRWOMAN SANDOVAL: I would agree. It
24 simplifies it. It doesn't entirely mirror what NMOGA does,
25 but I think it gets closer. I think it accomplishes what

1 NMOGA is trying to do in simplifying it, it's just a
2 slightly different way.

3 Now, I would say NMOGA proposed the date no later
4 than February 28 with the Division (unclear). I do recall
5 testimony about this, that they just want like two weeks
6 after they submit their C-115 report. So like kind of --
7 I'm fine with that. I don't think extending the date by two
8 weeks is going to make or break the system, and if it means
9 that the Division gets better data quality, then I think I
10 support the date change.

11 MR. MOANDER: Just to be clear, the Commission
12 wants to see the Division's final changes to 9(B) including
13 (1), (2) and (3), or are you just looking at (B) itself?

14 CHAIRWOMAN SANDOVAL: No, we are looking at (1),
15 (2), (3).

16 COMMISSIONER KESSLER: (1), (2), (3) redlines are
17 stricken, so we agree with all of that.

18 MR. MOANDER: All right. And we are changing the
19 date from -- at the beginning from February 15 to the 28th?

20 CHAIRWOMAN SANDOVAL: Yes.

21 MR. MOANDER: Okay. One second, please.

22 HEARING EXAMINER ORTH: Madam Chair, I believe
23 Climate Advocates also has a proposed change in (B)(3).

24 CHAIRWOMAN SANDOVAL: Oh. Yes. What are they
25 trying to do? I think it's numbering. This is just another

1 point, maybe, Mr. Moander, this is like part of what you
2 look at -- cross-references all of that stuff because we
3 have added some sections here and there.

4 MR. MOANDER: Yes, that is correct.

5 CHAIRWOMAN SANDOVAL: So (i), (j) and (m) in
6 Climate Advocates' proposal, (i) is the transported -- the
7 not suitable for transportation, (j) is pneumatics, (m) is
8 exploratory.

9 COMMISSIONER ENGLER: So I think all three of
10 those are included in the Division's exclusions. In other
11 words, the top category, whatever it was --

12 CHAIRWOMAN SANDOVAL: Yes.

13 COMMISSIONER ENGLER: -- I believe it should be
14 included as part of the (unclear).

15 CHAIRWOMAN SANDOVAL: I think we have talked
16 about that one, I think it's with the pneumatic controllers.
17 It's --

18 COMMISSIONER ENGLER: It's a normal operation.

19 CHAIRWOMAN SANDOVAL: Yeah, it's a normal
20 operation. So on -- again, I think it ties back to the on
21 lease gas use typically defined as a beneficial use, and we
22 are having a hard time going contrary to that, and any
23 reason (unclear) about normal operations without waste, so
24 therefore it should not against you as abnormal operations,
25 yes, it should.

1 So then what were the other ones, exploratory
2 wells and the pipelines. And I think we addressed the
3 pipelines. And that (2) will count against you as long
4 as -- (i) 2 will count against you if it's something that
5 was caused by the operator's operations. But I don't think
6 the flaring of nitrogen, H2S or CO2 should count against you
7 if it doesn't meet pipeline specifications.

8 COMMISSIONER KESSLER: It's not accepted. It
9 doesn't have to be done.

10 CHAIRWOMAN SANDOVAL: Right.

11 COMMISSIONER KESSLER: It's not a (unclear).

12 CHAIRWOMAN SANDOVAL: Right. I don't think it
13 meets the definition of waste.

14 COMMISSIONER KESSLER: I think it does meet the
15 definition of waste, but it doesn't have to.

16 CHAIRWOMAN SANDOVAL: Right.

17 COMMISSIONER KESSLER: Yeah, different.

18 CHAIRWOMAN SANDOVAL: So I -- and then the last
19 one was what? Oh, the exploratory wells. Again, I don't
20 know if that would meet the definition.

21 COMMISSIONER KESSLER: I don't know that I said
22 that.

23 CHAIRWOMAN SANDOVAL: I think you said it
24 backwards.

25 COMMISSIONER KESSLER: I think I might have said

1 it backwards. So flaring for exploratory wells is
2 reasonable, and so it is not waste and should not count
3 against you.

4 CHAIRWOMAN SANDOVAL: And same for --

5 COMMISSIONER KESSLER: Pipeline specifications.

6 CHAIRWOMAN SANDOVAL: Right.

7 COMMISSIONER KESSLER: Correct. In both case
8 they are not waste.

9 CHAIRWOMAN SANDOVAL: Yes. Because they are
10 necessary and not excessive. So I disagree with Climate
11 Advocates' proposal because those categories have been not
12 waste, and I still think that the OCD's updated C 8 -- no --
13 9(B) is appropriate.

14 COMMISSIONER ENGLER: Agree.

15 CHAIRWOMAN SANDOVAL: All right.

16 MR. MOANDER: Commissioner Kessler, any issue?

17 COMMISSIONER KESSLER: No, I'm great. I agree.

18 MR. MOANDER: Thank you.

19 COMMISSIONER KESSLER: Where are we?

20 COMMISSIONER ENGLER: (B)(4).

21 CHAIRWOMAN SANDOVAL: No changes from NMOGA.

22 COMMISSIONER KESSLER: We go down to (4)(C), no
23 changes from NMOGA.

24 MR. MOANDER: So striking of Paragraph (d) is
25 acceptable from each member?

1 CHAIRWOMAN SANDOVAL: I don't think we have
2 gotten there yet. I guess I'm not sure what (d) adds. Why
3 do you need to -- so they are timely reporting it on C-129
4 or C-141 according to the rule. I don't see a problem with
5 striking that.

6 COMMISSIONER KESSLER: I don't either.

7 CHAIRWOMAN SANDOVAL: Okay. All right, (d)(i),
8 NMOGA proposes to make it once per year.

9 COMMISSIONER KESSLER: I think there was rebuttal
10 testimony on this from the Division (unclear) so (d)(i) --
11 yeah, NMOGA suggests that the same frequency matches the
12 requirements for annual instrument monitoring for pipeline.
13 (Unclear) instrument monitoring for pipelines (unclear)
14 operational integrity --

15 CHAIRWOMAN SANDOVAL: That was testimony of Mr.
16 Greaves.

17 COMMISSIONER ENGLER: I think we should drop
18 the --

19 COMMISSIONER KESSLER: I think maybe NMOGA
20 changed their rationale part, why they wanted to do it twice
21 a year.

22 CHAIRWOMAN SANDOVAL: They wanted to do it once a
23 year.

24 COMMISSIONER KESSLER: Yeah, so basically -- and
25 then the Division goes on to say operators have no

1 obligation to use ALARM technology or to seek a credit. To
2 obtain a credit operators must have a three-year commitment
3 using the technology and be in compliance (unclear). So I
4 think it's just that --

5 CHAIRWOMAN SANDOVAL: I think the burden in order
6 to get a credit should be higher, and so I think as the
7 Division proposes is appropriate.

8 COMMISSIONER KESSLER: I agree with that.

9 COMMISSIONER ENGLER: I agree. There was
10 testimony from Mr. Bolander about that.

11 CHAIRWOMAN SANDOVAL: (5)(c), I don't see any
12 changes from either party.

13 COMMISSIONER KESSLER: This makes sense. They
14 are just making sure that, that -- they're reiterating what
15 the method would be.

16 CHAIRWOMAN SANDOVAL: Yes.

17 COMMISSIONER KESSLER: That makes sense.

18 COMMISSIONER ENGLER: Correct.

19 CHAIRWOMAN SANDOVAL: Then are there any other
20 changes until we get to (C)? I don't see any others
21 from --

22 COMMISSIONER KESSLER: (5), there's a change
23 from Climate Advocates

24 CHAIRWOMAN SANDOVAL: I don't see it.

25 COMMISSIONER KESSLER: I'm sorry.

1 CHAIRWOMAN SANDOVAL: (C), I don't see any
2 changes from the other parties. This is where -- oh, wait
3 never mind.

4 COMMISSIONER KESSLER: This spells out kind of
5 what the procedure and rights are, and if it ends up in a
6 disagreement, that the Division -- how an operator
7 submits --

8 CHAIRWOMAN SANDOVAL: I think some of this
9 language is that section that was moved from the previous
10 rule to here.

11 COMMISSIONER KESSLER: I agree this is setting
12 out a procedure for agreement resolution and that that's a
13 third party resolution if that is problematic.

14 CHAIRWOMAN SANDOVAL: I agree.

15 HEARING EXAMINER ORTH: Madam Chair, this is
16 Felicia. Before you leave the ALARM section of the rule, I
17 would add, just point out there was a public comment which
18 proposed some changes including asking the Commission to
19 require the Division to publish a list, for example, of
20 approved ALARM technologies. I think it came from Penny
21 Well. I mentioned it in my Hearing Officer Report.

22 I'm not sure if Mr. Moander would agree that it,
23 you know, would be the logical outgrowth test, but I did
24 want to bring it up.

25 MR. MOANDER: My thought on that is that makes

1 sense as a logical outgrowth. But the question is, what
2 question does the person have about the particulars, like
3 manufacturers and so on of ALARM technology. I am looking
4 for that, and I don't know that we have got much -- more
5 evidence on that.

6 CHAIRWOMAN SANDOVAL: I guess I don't think we
7 are supposed to set a criteria now what those are. I think
8 if -- as I'm recalling that now, that document, I think they
9 just are wanting some sort of publication of a list, not
10 that we have to spell that out now, but some point later on,
11 April 1 or January 1 of every year, the Division will
12 publish a list of -- I mean, my -- I would think that would
13 be good business practice just in general. I guess the
14 other question is whether or not we actually put it in.

15 MR. MOANDER: That goes to my point here. Do we
16 have any evidence about ALARM technology that would go to,
17 go to that level of detail? Like even if it's just a single
18 clause in here that says that the Commission will publish
19 that, I'm trying to figure out what evidence there is that
20 might support that amendment.

21 COMMISSIONER ENGLER: I guess that would be the
22 public comment that was just taken, isn't it?

23 MR. MOANDER: Right. So then that brings us to
24 the question of, if a comment reference of Dr. Engler, would
25 it be incorrect of me to construe a comment concerning ALARM

1 technology to be technical?

2 COMMISSIONER ENGLER: I agree if, you know, if
3 the evaluation is technical. I think the thing that I'm
4 looking at is in (B) accounting under (4), it says the
5 Division-approved ALARM technology. So at some point the
6 Division is going to review and provide a --

7 MR. MOANDER: Ah.

8 COMMISSIONER ENGLER: So why not just put
9 Division-approved ALARM technology published on the website?

10 CHAIRWOMAN SANDOVAL: That would be a very simple
11 way to do it.

12 COMMISSIONER ENGLER: And then everyone would
13 know -- I agree with what you are saying, Mr. Moander. We
14 did not hear a lot of evidence supporting technology, but I
15 guess I don't have a problem if the Division is going to do
16 due diligence and approve these technologies, that should be
17 published on the website.

18 MR. MOANDER: And that makes sense, given that
19 this -- it says Division-approved ALARM technology, so the
20 presumption is, as you noted, there is some sort of, whether
21 it's a list or whatever the case is, but there are approved
22 ALARM technologies by the Division. So access to that
23 information -- I'm assuming this is not -- this wouldn't be
24 technical given we've got this particular verbiage that's in
25 the rule stating the Division has this information.

1 COMMISSIONER ENGLER: That's my thought.

2 CHAIRWOMAN SANDOVAL: Which number was that?

3 COMMISSIONER ENGLER: Under (B) accounting under
4 Number (4), he has it up there, the use of Division-approved
5 ALARM technology.

6 CHAIRWOMAN SANDOVAL: Okay. We could -- I agree,
7 say published on the OCD website or the Division website.

8 COMMISSIONER ENGLER: Yes.

9 MR. MOANDER: Do we know if that information is
10 published or collected anywhere? Do we know that.

11 CHAIRWOMAN SANDOVAL: They are going to decide
12 that. At this point it doesn't exist.

13 MR. MOANDER: The reason I say that is the
14 fact this is prospective rulemaking I suppose. All right.

15 CHAIRWOMAN SANDOVAL: Okay. Going back to --

16 MR. MOANDER: Hold on. Let me put this in a
17 better place. Let me clean -- I would like to --

18 COMMISSIONER KESSLER: Could it be a separate
19 provision under -- it could be like in (d) or something that
20 says the Division shall publish on its website a list of
21 accepted or approved ALARM technologies.

22 MR. MOANDER: I think that's a preferable way to
23 do it.

24 COMMISSIONER KESSLER: Instead of putting it into
25 that other provision. I think it's awkward.

1 CHAIRWOMAN SANDOVAL: I don't have a strong
2 preference.

3 CHAIRWOMAN SANDOVAL: Dr. Engler?

4 COMMISSIONER ENGLER: Yes.

5 COMMISSIONER KESSLER: Say shall be published.

6 MR. MOANDER: All right. Shall be published.
7 Does that work?

8 CHAIRWOMAN SANDOVAL: Yes.

9 COMMISSIONER KESSLER: Great.

10 CHAIRWOMAN SANDOVAL: All right. (C), I think
11 basically we were at the part of approving the changes in
12 (C).

13 COMMISSIONER KESSLER: Yeah, I think I previously
14 discussed that I support the Division's proposal and I have
15 no other proposal.

16 CHAIRWOMAN SANDOVAL: I agree.

17 COMMISSIONER ENGLER: I agree.

18 CHAIRWOMAN SANDOVAL: Okay. (D), I will just say
19 there are no comments from the other parties until we get to
20 (D)(5).

21 COMMISSIONER KESSLER: NMOGA made no change, but
22 Climate Advocates -- (D)(1), the Division is just saying
23 to --

24 CHAIRWOMAN SANDOVAL: We need to make sure that
25 that's after the effective date of the rule.

1 COMMISSIONER KESSLER: Oh, yeah.

2 MR. MOANDER: Which subsection was that?

3 CHAIRWOMAN SANDOVAL: (D)(1)?

4 MR. MOANDER: I'm lost again.

5 CHAIRWOMAN SANDOVAL: Down, Down. Big (D).

6 MR. MOANDER: Oh, all the way -- oh, okay, you
7 guys got way ahead of me. So there is no issue with
8 Subsection (B)?

9 CHAIRWOMAN SANDOVAL: We discussed that before we
10 finished ALARM.

11 MR. MOANDER: Okay. You guys hop all over. I'm
12 like, wait, who's on first? Who's on second?

13 COMMISSIONER KESSLER: Okay. So then we need to
14 change that date, Mr. Moander.

15 MR. MOANDER: Go over for changing the what?

16 CHAIRWOMAN SANDOVAL: After the effective date of
17 the rule.

18 MR. MOANDER: Yes.

19 CHAIRWOMAN SANDOVAL: So (D) I don't see any
20 editions there. I believe -- I can't recall. I think these
21 are good editions. I think it will add some technical
22 content -- it's positive. And it's important to understand
23 how the operator intends to minimize venting.

24 COMMISSIONER KESSLER: I think these are
25 important, substantive editions, yes. The Division

1 discussed them, provided testimony about why they were
2 important, and I agree with these changes.

3 CHAIRWOMAN SANDOVAL: I agree.

4 MR. MOANDER: Dr. Engler?

5 COMMISSIONER ENGLER: Yes, I will go with -- was
6 this NMOGA's disagreement?

7 CHAIRWOMAN SANDOVAL: No disagreement --

8 COMMISSIONER ENGLER: Okay. Then I'm good.

9 CHAIRWOMAN SANDOVAL: -- in the rest of the rule
10 from NMOGA. In (2) we need to look at that date. Is that
11 appropriate? I think it should be -- now it should be
12 April 1.

13 COMMISSIONER ENGLER: To continue that all you
14 have to say is edit second quarter 2022.

15 CHAIRWOMAN SANDOVAL: Okay. This is maybe a dumb
16 question, but shouldn't that be 2023? How are they going to
17 know in 2022 with just starting to meet the gas capture
18 percentage if you are (unclear) for the year -- I guess
19 isn't the certification in 2023, right, the first
20 certification, you know, you'll know on the 28th of February
21 that you are in compliance in 2023, how is the operator at
22 the very beginning of April when they just start trying to
23 attain the gas capture percentage -- am I -- at the time it
24 submits an APD's renewal or recompleted well is cumulatively
25 for the year not in compliance its statewide natural gas --

1 COMMISSIONER KESSLER: So being in compliance at
2 the beginning of 2022 --

3 CHAIRWOMAN SANDOVAL: So being in compliance at
4 the beginning of 2022 -- in April of 2022, right? So they
5 inherently can't be out of compliance until the next year.
6 This is really awkwardly worded, in my mind. Don't you
7 think?

8 COMMISSIONER KESSLER: It's a little bit awkward.

9 CHAIRWOMAN SANDOVAL: I guess we are trying to
10 address that with this being submitted in 2022 or being
11 submitted in 2023, so I'm -- I guess --

12 COMMISSIONER KESSLER: The baseline --

13 CHAIRWOMAN SANDOVAL: If you drop below it.

14 COMMISSIONER KESSLER: Yeah.

15 CHAIRWOMAN SANDOVAL: I think that's what it's
16 saying now that I read it six times. I think that's what
17 it's trying to say. In 2022, if once you establish your
18 baseline, if you drop below your baseline.

19 COMMISSIONER KESSLER: Yeah.

20 CHAIRWOMAN SANDOVAL: Okay.

21 COMMISSIONER ENGLER: Is that 2022 though the
22 second quarter is 2023?

23 CHAIRWOMAN SANDOVAL: I think so. Submitted
24 after April 1, thank you.

25 COMMISSIONER KESSLER: Yes.

1 CHAIRWOMAN SANDOVAL: To be after April 21, 2022.

2 MR. MOANDER: April 21 or April 1?

3 CHAIRWOMAN SANDOVAL: It needs to be after

4 April 1.

5 MR. MOANDER: 2022?

6 CHAIRWOMAN SANDOVAL: Yes.

7 COMMISSIONER ENGLER: I think the 2023 is okay.

8 CHAIRWOMAN SANDOVAL: Should it be on or after

9 April 1?

10 COMMISSIONER ENGLER: No. April Fool's Day we

11 give them.

12 CHAIRWOMAN SANDOVAL: We'll give them April

13 Fool's Day. I think it should be on after.

14 MR. MOANDER: Yeah, because that's the deadline.

15 CHAIRWOMAN SANDOVAL: I'm on board with all those

16 dates now that I understand it.

17 MR. MOANDER: Any other comment?

18 COMMISSIONER ENGLER: It's good.

19 COMMISSIONER KESSLER: Agreed.

20 CHAIRWOMAN SANDOVAL: Okay. (2)(B)(iii). I

21 think that makes sense. They may not have -- I mean, this

22 is for production operators. I'm not sure they are going to

23 have a map of the gathering system.

24 COMMISSIONER KESSLER: I think actually it was

25 established (unclear) does not have a map at the gathering

1 system. I think that change is to accommodate the testimony
2 that the operator wouldn't have that information.

3 CHAIRWOMAN SANDOVAL: I agree. In agreement?

4 COMMISSIONER ENGLER: Oh, yeah.

5 CHAIRWOMAN SANDOVAL: Okay, (4)(b)(iv).

6 COMMISSIONER KESSLER: Again, I think they are
7 not going to have the entire capacity, the capacity for the
8 gathering system, so that makes sense.

9 CHAIRWOMAN SANDOVAL: Nor does it matter if it's
10 not part of the gathering, so this makes more sense.

11 CHAIRWOMAN SANDOVAL: Dr. Engler?

12 COMMISSIONER ENGLER: Yes. Does NMOGA challenge
13 any of these?

14 CHAIRWOMAN SANDOVAL: No, they don't have
15 anything for the remainder of the rule. Once you get to (5)
16 there is a comment from Climate Advocates, but not from
17 NMOGA. (c)(ii)?

18 COMMISSIONER KESSLER: Yes, it makes sense to
19 have it be (unclear) pipeline is straight up volume.

20 CHAIRWOMAN SANDOVAL: Yes, and depending on how
21 far you plan ahead, it may not be relevant. We heard
22 testimony on that. I agree with (c)(ii). Dr. Engler?

23 COMMISSIONER ENGLER: Yes.

24 CHAIRWOMAN SANDOVAL: (c)(iii), it just aligns it
25 with what was said above. It aligns it with (b)(iv).

1 COMMISSIONER KESSLER: Yes, I agree with this. I
2 think it aligns with the prior provision.

3 COMMISSIONER ENGLER: It's good.

4 CHAIRWOMAN SANDOVAL: Agree. (D)(3), I think
5 that's right. I guess my question is, does the Division get
6 any say in that, or like the operator just says it's
7 confidential, and there is no -- it seems like it takes some
8 of the discretion from the Division, but I don't know if
9 that's -- I would have to look at that statute.

10 COMMISSIONER KESSLER: I don't know if the
11 Division really --

12 MR. MOANDER: I'm pulling that up right now.

13 CHAIRWOMAN SANDOVAL: Does it matter?

14 COMMISSIONER KESSLER: No, I think -- I don't
15 think there is anything in what the statute says that takes
16 away the Division's legal feasibility to review whether or
17 not confidentiality has been properly asserted by an
18 operator, but --

19 MR. MOANDER: I agree, Commissioner Kessler, that
20 this really -- it says assert or the word is assert. An
21 assertion does not presume automatic granting or
22 recognition. I'm pulling up that statute from L 2 so we can
23 take a look at it.

24 Here's our answer. So it looks like it does
25 trigger automatic confidentiality with the exception for

1 statistical collection.

2 CHAIRWOMAN SANDOVAL: Is there any concern with
3 that?

4 COMMISSIONER KESSLER: I think if the information
5 is confidential and it meets the criteria of the statute
6 then it is confidential and the Division doesn't have -- the
7 Division has -- the Division maintains discretion, as I
8 read this, to review the assertions for alignment with the
9 criteria in the statute.

10 And, for example, if an operator tries to claim
11 something confidential and asserts confidentiality on
12 something that they have certain criteria, the Division
13 counsel could just state it doesn't meet the criteria.

14 So I don't think it automatically would give
15 confidentiality to information that people assert is
16 confidential.

17 CHAIRWOMAN SANDOVAL: That makes sense. That
18 sounded pretty legal.

19 MR. MOANDER: I agree with Commissioner Kessler.
20 So there is nothing in this paragraph that gives me any
21 heartburn.

22 CHAIRWOMAN SANDOVAL: Okay. All right. Then I
23 agree with the changes.

24 COMMISSIONER ENGLER: I agree.

25 CHAIRWOMAN SANDOVAL: All right. So then walking

1 down to (5), Climate Advocates does have an edit to (5).

2 I think we heard testimony on this, I think.

3 COMMISSIONER KESSLER: Yeah, it looks like --

4 CHAIRWOMAN SANDOVAL: I feel like they talk about
5 this in (5).

6 COMMISSIONER KESSLER: OCD objects in its
7 rebuttal exhibit. Climate Advocates (unclear) they don't
8 have a response to it.

9 CHAIRWOMAN SANDOVAL: What was the justification
10 of OCD as to why they didn't want the and selects?

11 COMMISSIONER KESSLER: What section?

12 CHAIRWOMAN SANDOVAL: (5).

13 HEARING EXAMINER ORTH: Madam Chair, it was from
14 Mr. Bolander, and it says OCD prefers a performance standard
15 to a prescriptive mandate. Operator should be able to use
16 any alternative use appropriate for the situation, be given
17 the discretion using good engineering judgment, change
18 (unclear) depending on the circumstances.

19 OCD's objective is encourage better production
20 practices, not to micro manage. Additionally it is
21 unrealistic to expect that operators have a plan for 100
22 percent. No beneficial use is 100 percent. The objective
23 is to acquire planning, not to compel operators to shut in
24 wells.

25 CHAIRWOMAN SANDOVAL: I think -- okay, so I agree

1 that we don't want to -- I think throughout this the
2 Division has stated they want to provide flexibility and the
3 options for technology since we get can't provide any
4 because it doesn't exist, but with that, I mean, in my mind,
5 would that not fall under (I) the other alternative that
6 beneficial user approved by the Division?

7 I mean, I also seen to recall that it was like,
8 well, if they don't -- it says evaluate, but they are
9 inherently going to have to select something I guess or the
10 plan is not going to be approved.

11 I guess I'm not seeing the huge problem with
12 saying something like submits a venting and flaring plan --
13 evaluate and selects potential alternative beneficial use,
14 and if they wanted to change it down the road, they could
15 resubmit the plan.

16 HEARING EXAMINER ORTH: So Climate Advocates
17 didn't -- I think Climate Advocates did consider the
18 rebuttal testimony and reduced the word select one or more
19 of the alternative, potential alternative uses. I think
20 that's their response to that.

21 COMMISSIONER ENGLER: Let me ask this, maybe I
22 don't understand. So they can either shut in the well or
23 get certification, right, or submit a venting and flaring
24 plan to the Division. The Division is to evaluate. So if
25 I -- if I submit a venting and flaring plan to evaluate, am

1 I not meeting the obligation, and therefore I can -- what's
2 the other option, vent and flare?

3 CHAIRWOMAN SANDOVAL: I think that's what the
4 concern is from Climate Advocates. It asserts that you have
5 to submit a plan to evaluate it, but it doesn't actually
6 require the operator to evaluate and utilize.

7 COMMISSIONER ENGLER: Correct. If you can't use
8 the (unclear) not vent and flare, and therefore you want
9 them to use (unclear) then I think Climate Advocates has to
10 write what --

11 CHAIRWOMAN SANDOVAL: I wouldn't want to say
12 though, instead of select, I would say utilizes. I can
13 select something, but not actually put it to use.

14 COMMISSIONER KESSLER: Well, certainly the
15 intent, the intent of the Division is to (unclear).

16 CHAIRWOMAN SANDOVAL: I think it would be
17 intended for them to utilize one of these. If I'm recalling
18 right, it's like, you either need to, in this plan, you need
19 to either hook up to a pipeline and the gas goes down the
20 pipeline, or you need to have some sort of beneficial use,
21 one or the other so that you're not just openly venting or
22 flaring all of the gas.

23 And so it makes sense, in my mind, that you need
24 to evaluate and then subsequently use one of those. I mean,
25 I could see where the Division would be like, obviously you

1 have to use it.

2 COMMISSIONER ENGLER: Yes, again, Climate
3 Advocates better defines it.

4 CHAIRWOMAN SANDOVAL: I am inclined to use --

5 COMMISSIONER ENGLER: They did come -- their
6 second change, to ensure that the natural gas is put to
7 alternative use or uses, I think that captures (unclear). I
8 think we are all in agreement that's the direction we want
9 to go.

10 CHAIRWOMAN SANDOVAL: I would prefer to say
11 utilize over select. I still think select, it doesn't imply
12 use, it just means that --

13 COMMISSIONER ENGLER: Utilizes one or more?

14 CHAIRWOMAN SANDOVAL: Yes. So I think it should
15 be, after the Subsection (D) of 19.15.27.7 NMAC, or submit a
16 venting and flaring plan to the Division that evaluates and
17 utilizes one or more of the potential alternative beneficial
18 uses for the natural gas -- how do we fill out the second
19 edition?

20 COMMISSIONER ENGLER: Utilize --

21 CHAIRWOMAN SANDOVAL: I don't like the word
22 select. I guess, what's the point? It seems a little
23 redundant to me.

24 MR. MOANDER: Evaluates potential beneficial
25 uses, and something about it -- I assume the goal here, and

1 we use the word utilizes to implement? Is that -- that's
2 the ultimate objective here; right?

3 CHAIRWOMAN SANDOVAL: Right. I think we are
4 looking at the second statement Climate Advocates saying --
5 I feel like it's a little redundant to the change we just
6 made, but maybe --

7 COMMISSIONER ENGLER: Let's hear from the lawyer
8 on that one.

9 COMMISSIONER KESSLER: Yeah, I --

10 REPORTER: This is, Irene. Dr. Engler, I need
11 for you to lean more towards your microphone or speak up.
12 Thank you.

13 COMMISSIONER ENGLER: Thank you, Irene. That's
14 only my first one today.

15 COMMISSIONER KESSLER: Don't brag.

16 REPORTER: I'm trying to keep it to a lull.

17 COMMISSIONER ENGLER: We're trying to help you
18 out.

19 COMMISSIONER KESSLER: Yeah, I do -- I mean, I
20 think that the other -- the requirement of action
21 is (unclear) Climate Advocates, and I think that either of
22 those provisions would accomplish that. I don't think that
23 we need both.

24 So I'm just like stewing a little bit over how
25 utilize -- have a plan that evaluates and utilizes, just the

1 plan.

2 MR. MOANDER: So how about evaluate potential for
3 beneficial uses and subsequently implements one?

4 COMMISSIONER KESSLER: I actually don't -- I
5 think that's the point of why they use select, because
6 like -- I think that's why they -- I think that's why they
7 use the word select because it's future action.

8 MR. MOANDER: And it seems to me like we are
9 submitting an evaluation and it's really a proposal that's
10 being tendered. It's that we have made this evaluations,
11 and we think this is the best option.

12 CHAIRWOMAN SANDOVAL: Okay. I see the reason for
13 the word select. Still don't like the word, but it's --

14 MR. MOANDER: It's not implementation, which I
15 think is how the term has been read.

16 CHAIRWOMAN SANDOVAL: Yeah. Okay. I would be
17 fine with the word select.

18 (Dog barking.)

19 MR. MOANDER: You know, I'm dog sitting starting
20 this afternoon, so I apologize in advance if you hear a
21 bunch of dog wrestling going on in the background.

22 CHAIRWOMAN SANDOVAL: That's all right. That's
23 my daily life.

24 MR. MOANDER: It's my life, too. I'm flexible
25 today.

1 CHAIRWOMAN SANDOVAL: I still think it's
2 redundant to put that second edition in there. I think we
3 just leave it at that.

4 MR. MOANDER: You are talking about the edition
5 to --

6 CHAIRWOMAN SANDOVAL: Climate Advocates had a
7 second proposed edition.

8 MR. MOANDER: Okay, yeah.

9 CHAIRWOMAN SANDOVAL: That seems redundant to me.
10 I think the intent is captured in that statement right
11 there.

12 MR. MOANDER: Are the changes underlined
13 acceptable?

14 COMMISSIONER ENGLER: Yes.

15 CHAIRWOMAN SANDOVAL: Yes.

16 COMMISSIONER KESSLER: Yes.

17 CHAIRWOMAN SANDOVAL: And I am good with the
18 elimination of (g), I think it was just redundant, and the
19 edition of the word beneficial to (i).

20 MR. MOANDER: Everybody else good with those?

21 COMMISSIONER ENGLER: Yes.

22 COMMISSIONER KESSLER: Yes.

23 CHAIRWOMAN SANDOVAL: All right, (6), there are a
24 couple of edits at (6) and (7) from Climate Advocates.

25 COMMISSIONER ENGLER: (6)(b) --

1 COMMISSIONER KESSLER: -- in the Division's
2 proposal.

3 CHAIRWOMAN SANDOVAL: (b)(2) is a different
4 reference. I think that's right though. I think the
5 reference to (5) is correct.

6 CHAIRWOMAN SANDOVAL: Okay. So (6)(b) works for
7 me.

8 CHAIRWOMAN SANDOVAL: (6)(a) should be paragraph
9 (5) not (4); right?

10 CHAIRWOMAN SANDOVAL: Yes, that's what we are
11 validating on (6)(b).

12 COMMISSIONER KESSLER: I like the edition -- oh,
13 wait. Yeah, I like the edition of the time frame that the
14 Division has.

15 CHAIRWOMAN SANDOVAL: I think it makes complete
16 sense.

17 COMMISSIONER KESSLER: Yeah, I do.

18 COMMISSIONER ENGLER: Yes.

19 CHAIRWOMAN SANDOVAL: All good in (6)(b).

20 And (7), Climate Advocates -- and there was
21 plenty of testimony on this -- wants to auto deny --
22 everyone -- oh, hold on. They want to add -- they want to
23 break it apart. They want to break (7) apart and add an
24 (8).

25 Okay. So let's look at Climate Advocates'

1 proposed (7), and then we can go through their proposed (8),
2 which encompasses the Division's Part (7).

3 All right. You know, I think we had a lot of
4 testimony on that, and the Division wants to retain its
5 discretion and authority on actions that it takes.

6 COMMISSIONER KESSLER: I am looking at the
7 Division's rebuttal testimony. OCD's proposal provides
8 appropriate discussion to deal with operators who submit
9 APDs that were not planned for (unclear) maybe not have 100
10 percent takeaway capacity.

11 OCD can condition APDs and/or take other action
12 operators (unclear) including assessing civil penalties.
13 Operators are out of compliance (unclear) and make it
14 difficult for operators to (unclear). That's (D)(7) and
15 (D)(8).

16 CHAIRWOMAN SANDOVAL: I'm not on board with
17 limiting, for all of those reasons, limiting the Division's
18 options.

19 COMMISSIONER KESSLER: I think there's been
20 testimony from the Division and Climate Advocates on this
21 part, and I would defer to the Division's evaluation of its
22 own assessment of this enforcement action.

23 COMMISSIONER ENGLER: I think that there is -- I
24 do -- I do recall quite a bit testimony back and forth --

25 REPORTER: Speak up, please.

1 COMMISSIONER ENGLER: I do recall quite a bit of
2 testimony on both sides, but I do think that -- I believe
3 that OCD has succinctly put together what they think they
4 have the authority to enforce, so I agree with Commissioner
5 Kessler.

6 CHAIRWOMAN SANDOVAL: I agree with both of what
7 Commissioner Kessler and Dr. Engler have said. So let's
8 move to (8) and their proposal to cut up (7). It's sort of
9 in two pieces. So I think --

10 COMMISSIONER KESSLER: It really isn't necessary
11 if we were to approve their (7); right?

12 CHAIRWOMAN SANDOVAL: I think in part. I'm
13 looking at these (unclear). If we were to say, you know --
14 so if it were to be -- if the operator does not make a
15 certification, or fails to submit an adequate venting and
16 flaring plan, and then, you know, the Climate Advocates is
17 saying -- which I think this venting and flaring plan is
18 what we just talked about in (5) that provides for
19 alternative uses for the anticipated volume of natural gas
20 produced on a first production of the well, I could be
21 okay -- I think I would add that portion of the statement
22 stopping with first production from the well.

23 Or even that provides for anticipated volume of
24 natural gas and leave it at that. And I'm not sure if
25 produced on the first production is really necessary. I

1 think that just adds a point of clarification as to what the
2 natural gas venting and flaring plan is.

3 I'm not opposed to that. Now once we get down to
4 (b), that's another conversation. But I could be okay
5 adding in after, venting and flaring plan that provides for
6 alternative uses to the anticipated volume of natural gas.

7 COMMISSIONER KESSLER: But isn't that in (7)?
8 Look at the Division's proposal for (7). I may well --

9 CHAIRWOMAN SANDOVAL: So predominantly it's there
10 both to submit an adequate venting and flaring plan. It
11 leaves it at that.

12 COMMISSIONER KESSLER: And it doesn't talk about
13 alternatives.

14 CHAIRWOMAN SANDOVAL: Right. I mean I think this
15 is just like a caveat, almost.

16 COMMISSIONER ENGLER: Doesn't an adequate venting
17 and flaring plan include the alternatives?

18 CHAIRWOMAN SANDOVAL: Yeah, so I think it's
19 implied without adding that language.

20 COMMISSIONER ENGLER: That's correct.

21 CHAIRWOMAN SANDOVAL: But if it provides a point
22 of clarification that's important, then I'm not opposed to
23 it either, at least that subset of language.

24 COMMISSIONER KESSLER: So (8) wouldn't be an
25 edition to the Division's (7), it would be adding a little

1 bit of language.

2 CHAIRWOMAN SANDOVAL: Yes.

3 COMMISSIONER KESSLER: I see what you're saying.

4 CHAIRWOMAN SANDOVAL: Yes. I'm sorry, I did not
5 clarify that. It's not adding another (8), but adding that
6 little caveat into the language in (7). I think that it is
7 already implied.

8 COMMISSIONER KESSLER: I don't know -- so the
9 language would read something like, if operator does not
10 make the certification with (unclear) adequate venting and
11 flaring plan which includes alternative uses for the
12 anticipated volume of natural gas produced?

13 CHAIRWOMAN SANDOVAL: Yes, and then --

14 COMMISSIONER KESSLER: Or if the Division --
15 okay.

16 CHAIRWOMAN SANDOVAL: Yes.

17 COMMISSIONER KESSLER: And that's just back to
18 our normal --

19 CHAIRWOMAN SANDOVAL: Yes.

20 COMMISSIONER ENGLER: I think that's redundant.

21 CHAIRWOMAN SANDOVAL: I agree, it is redundant,
22 but I'm also again not opposed to the redundancy.

23 Natural gas produced -- I think -- which provides
24 for the alternative beneficial uses for the anticipated
25 volume of natural gas produced?

1 MR. MOANDER: So you want the shall include
2 language?

3 CHAIRWOMAN SANDOVAL: No, I'm fine -- um -- um.

4 COMMISSIONER KESSLER: I would say maybe
5 inclusive of instead of shall include.

6 CHAIRWOMAN SANDOVAL: So get rid of which, too.

7 MR. MOANDER: And that is including --

8 COMMISSIONER KESSLER: Inclusive of.

9 MR. MOANDER: Okay.

10 COMMISSIONER ENGLER: I support that. It's
11 understandable that that edition only applies to the venting
12 and flaring plan, not the --

13 CHAIRWOMAN SANDOVAL: Yes.

14 MR. MOANDER: Which such plan including
15 alternatives -- because that would make that much clearer.

16 CHAIRWOMAN SANDOVAL: It just seems awkward.

17 COMMISSIONER KESSLER: (Inaudible.)

18 HEARING EXAMINER ORTH: We can't hear
19 Commissioner Kessler.

20 COMMISSIONER KESSLER: I'm just talking to
21 myself. It's not for the record.

22 CHAIRWOMAN SANDOVAL: We're being mumbly at this
23 point.

24 HEARING EXAMINER ORTH: It's about time for a
25 break, Madam Chair.

1 MR. MOANDER: Yes, I agree.

2 CHAIRWOMAN SANDOVAL: Let's finish this. We are
3 almost there. I don't disagree, but let's finish 27.

4 MR. MOANDER: So the verbiage -- yeah, it's a
5 touch verbose, but we want to make clear that the
6 inclusional alternative beneficial uses applies to the
7 flaring plan, not the certification. So I think it does
8 have to be a little more wordy.

9 COMMISSIONER KESSLER: I think, Mr. Moander, so
10 (unclear).

11 CHAIRWOMAN SANDOVAL: So we've got, if I
12 understand this correctly, the alternative beneficial use
13 is -- that is -- that is brought out through the producers
14 venting and flaring plan; right? That's where that
15 beneficial use language is coming from is going to be
16 through that plan.

17 So if we are going to add that language, I think
18 we need to be clear that the alternative beneficial use has
19 to come through the plan and it's not the certification.

20 COMMISSIONER KESSLER: I agree with you.

21 CHAIRWOMAN SANDOVAL: Can't we just say -- why
22 not just say, if the operator does not make a certification
23 or fails to submit a timely venting and flaring plan which
24 includes alternative beneficial uses, blah, blah, blah,
25 or -- and just say which includes.

1 MR. MOANDER: All right. So there is a problem I
2 foresee with that. It's -- what is the which, the
3 certification or the plan? I mean I understand it's in fact
4 the plan, but the language could leave it as -- it's vague.

5 CHAIRWOMAN SANDOVAL: Ms. Orth, do you have any
6 thoughts on this one?

7 HEARING EXAMINER ORTH: All right. So, sorry,
8 we're connecting like on the fly and -- because we do
9 obviously want to it to be understandable, and even, you
10 know, elegant if we can manage it. But it would help to
11 just take a minute to reflect on it, for example, this and
12 maybe a few other -- a few other phrases that have been
13 awkward.

14 CHAIRWOMAN SANDOVAL: Okay. Well, then let's
15 finish out (7)(b).

16 COMMISSIONER ENGLER: Let me ask you, is there a
17 reason why we couldn't add this, you know, if the operator,
18 one, does not make a certification or, two, fails to submit
19 a venting and flaring plan, which is blah, blah, or,
20 three --

21 COMMISSIONER KESSLER: Yes.

22 CHAIRWOMAN SANDOVAL: Oh, I like that.

23 COMMISSIONER ENGLER: That separates all three
24 into their own individual --

25 CHAIRWOMAN SANDOVAL: That's beautiful.

1 COMMISSIONER KESSLER: Say elegant.

2 COMMISSIONER ENGLER: Elegant.

3 CHAIRWOMAN SANDOVAL: That is elegant.

4 COMMISSIONER ENGLER: I have never been elegant.

5 COMMISSIONER KESSLER: I like it.

6 CHAIRWOMAN SANDOVAL: Beautiful.

7 COMMISSIONER ENGLER: My contribution. I guess
8 you will have to change (a) and (b) below to something else.

9 CHAIRWOMAN SANDOVAL: Probably (b)(1) and (2).

10 COMMISSIONER ENGLER: Little (i).

11 CHAIRWOMAN SANDOVAL: Yeah. That was great, Dr.
12 Engler.

13 MR. MOANDER: The important thing is, I know what
14 it means.

15 CHAIRWOMAN SANDOVAL: That's fine. All right.
16 I'm sure --

17 HEARING EXAMINER ORTH: Little (i), little two
18 (i) goes under (6)?

19 MR. MOANDER: It doesn't actually.

20 HEARING EXAMINER ORTH: Because it applies to
21 (a), (b) and (c).

22 MR. MOANDER: Yeah, that's where the breakdown
23 doesn't work quite right.

24 COMMISSIONER KESSLER: Should we look at -- do we
25 want to just discuss (b), at lease the substantive part, and

1 then we can figure out the construct to it.

2 CHAIRWOMAN SANDOVAL: I think (b) is what we
3 discussed with the breakdown of (7) here where we're taking
4 the Division's authority and discretion away with the
5 changes that are proposed kind of in (8)(b).

6 COMMISSIONER KESSLER: Yes. I already stated the
7 reason that I believe that the Division has (unclear) so I
8 think it equally applies to Climate Advocates' proposed (a)
9 and (b) as it is in (7) (a) and (b).

10 CHAIRWOMAN SANDOVAL: I agree. Dr. Engler?

11 COMMISSIONER ENGLER: I agree.

12 CHAIRWOMAN SANDOVAL: Okay.

13 COMMISSIONER ENGLER: So can we -- so under (c)
14 there's (unclear) then change the Division may, go to a
15 separate line, the Division may -- how is this -- the
16 Division may based on -- how do you want to say it? The
17 Division may, based on the above, or based on (a), (b), (c),
18 or whatever you want to say, the Division may deny or
19 approve; right?

20 HEARING EXAMINER ORTH: I think it's even
21 more (unclear) I want to make a similar suggestion that (7)
22 start with, the Division may deny the APD or potentially
23 approve the APD if the operator does not. But I believe we
24 need to separate out (a) and (b) from (c) because it's about
25 making a certification or failing to submit an adequate

1 venting and flaring plan, or if the Division determines that
2 the operator will not have a liquid capacity.

3 COMMISSIONER ENGLER: That's elegant. I like
4 that.

5 HEARING EXAMINER ORTH: All right. I'm glad I
6 have given you something to make fun of me. Thank you.

7 COMMISSIONER ENGLER: That's a compliment. You
8 guys agree?

9 CHAIRWOMAN SANDOVAL: No, I do.

10 COMMISSIONER ENGLER: No, you don't agree?

11 COMMISSIONER KESSLER: Yes, I do.

12 CHAIRWOMAN SANDOVAL: Yes, I do. I think -- let
13 me clarify myself.

14 MR. MOANDER: I'm seeing why now Climate
15 Advocates broke this out, because I can see this going to be
16 making it into separate (8) for the (c) and its subparts.

17 CHAIRWOMAN SANDOVAL: I mean, I'm not opposed to
18 structuring it however works the best as long as the intent
19 of what we are trying to do is to translate it here. That
20 I'm fine with. I don't, to be honest, how this is
21 structured, I mean, I'm very open to that, but the intent is
22 what we are trying to do is --

23 COMMISSIONER KESSLER: I think that's what
24 Climate Advocates --

25 MR. MOANDER: I'm sorry, Commissioner Kessler?

1 COMMISSIONER KESSLER: I think this looks good.

2 CHAIRWOMAN SANDOVAL: As it sits now?

3 COMMISSIONER KESSLER: You will have to take away
4 after (c), starting with the Division may.

5 MR. MOANDER: And then bring this up?

6 CHAIRWOMAN SANDOVAL: No, just get rid of all of
7 it.

8 MR. MOANDER: This is what we have, the Division
9 may.

10 CHAIRWOMAN SANDOVAL: No, get rid of all of it.
11 We put that at the top now.

12 MR. MOANDER: Like this?

13 CHAIRWOMAN SANDOVAL: Yes.

14 MR. MOANDER: Okay, that works, too.

15 COMMISSIONER ENGLER: Under (a), make a
16 certification, that "or" needs to stay there.

17 CHAIRWOMAN SANDOVAL: Yes.

18 MR. MOANDER: Before we leave this, I do want to
19 just make a point here because this issue got raised with
20 me. So there is an issue of citation format for the
21 Register, and this is -- so everyone can take a look at
22 this, it is (G)(2)(m), I think.

23 It says other surface waste as defined, I changed
24 what was originally in the NMOGA language to reorganize this
25 for a proper citation. Do any of the Commissioners have an

1 objection to that change to comport with style requirements?

2 COMMISSIONER KESSLER: No, I understand why that
3 change is being made. I agree with. Thank you for that,
4 Mr. Moander.

5 COMMISSIONER ENGLER: I don't understand it, but
6 I will go with it.

7 CHAIRWOMAN SANDOVAL: I'm good with it.

8 MR. MOANDER: All right.

9 CHAIRWOMAN SANDOVAL: Okay. So I think we are
10 going to take a break, but so just a thought, I think for
11 Part 28, Mr. Moander, if you could send me this document so
12 we could print it out, and I think it would be helpful to
13 have the changes you want to make in Part 27 next to the
14 changes in Part 28 so we can make that process easier.

15 MR. MOANDER: I will do the best I can, given the
16 limitations of the technology here. Let me put it -- try to
17 explain this briefly. So I have every document up on a
18 second -- I have two screens up. I have all the parties'
19 documents on my small screen, and I'm sharing my large one.

20 If we start doing that, my concern is that I'm
21 going to not only run out of space to navigate documents,
22 but, two, having tried this before, this can take some
23 effort going back and forth between documents.

24 CHAIRWOMAN SANDOVAL: Chris, I think you are
25 misunderstanding me. What I would like to do is, can you

1 send me the document you have up here?

2 MR. MOANDER: Yes.

3 CHAIRWOMAN SANDOVAL: E-mail it to me as is, I
4 don't care how ugly it is, and I can run upstairs during
5 this break and print it out. And then the Commissioners
6 will have it in front of them so that you don't have to go
7 back and forth, back and forth. I think that will make this
8 process exceptionally helpful. At least it will for me.

9 MR. MOANDER: I will send this document over
10 momentarily.

11 HEARING OFFICER ORTH: I would like it as well,
12 Chris, if you would, please. This is Felicia.

13 MR. MOANDER: Sure. As long as no one complains
14 it's bleeding all over the place.

15 CHAIRWOMAN SANDOVAL: It can bleed all it wants
16 to. If you could just send it to me and I will get it
17 printed out. And probably 20 minutes, to be safe, so let's
18 come back at 3 -- around 3:05. All right. And once we get
19 it I will print it out.

20 MR. MOANDER: Awesome. Thank you, Madam Chair.

21 CHAIRWOMAN SANDOVAL: Okay, thanks.

22 (Recess taken.)

23 CHAIRWOMAN SANDOVAL: 3:08 p.m. All right.

24 Mr. Moander?

25 MR. MOANDER: I am present.

1 CHAIRWOMAN SANDOVAL: Ms. Orth?

2 HEARING EXAMINER ORTH: Yes, I'm here.

3 CHAIRWOMAN SANDOVAL: All right. We're here.

4 Okay, Part 28. We got that printed out on the documents,
5 thank you. All right. For 28, let's go.

6 MR. MOANDER: Hold on a second.

7 COMMISSIONER KESSLER: We are going to have to go
8 to Part 7, Page 17 small changes.

9 MR. MOANDER: Let me pop up the share here, and
10 just for the sake of clarity for everybody, this, courtesy
11 of Mr. Ames, this is a version of Part 28 that incorporates
12 through the final changes proposed, I think it was on the
13 5th, by the Division. So those are already folded in here,
14 just so everyone understands that.

15 CHAIRWOMAN SANDOVAL: Okay. Can you make it a
16 little bigger, please? Thank you.

17 MR. MOANDER: Is that good?

18 CHAIRWOMAN SANDOVAL: Yeah, that's fine. All
19 right. 19.15.28.6 the word protect that aligns with
20 language is 19.15.27.6, and I believe that should added.

21 COMMISSIONER ENGLER: I agree.

22 COMMISSIONER KESSLER: Agree.

23 CHAIRWOMAN SANDOVAL: C, 19.15.27.C, I agree with
24 these changes, custody transfer typically occurs at a sales
25 meter and not the back sort of usual demarcation. Without

1 that language, I do not think the definition would be clear
2 and would provide uncertainty.

3 COMMISSIONER KESSLER: Agreed.

4 COMMISSIONER ENGLER: I also agree.

5 CHAIRWOMAN SANDOVAL: All right. D, emergency
6 definition is slightly nuance to Part 27. Also I will note
7 that there are changes proposed from NMOGA in (5) and (6).
8 Let's look at (4) first.

9 Okay. So go back to Section D in here, it
10 states, as soon as possible, but no more than 12 hours after
11 discovery of an emergency or malfunction, the operator shall
12 provide verbal notification to each upstream operator whose
13 gathering system -- who now gathering system is affected,
14 shall provide written confirmation or the verbal
15 notification, blah, blah, blah, basically that's the
16 notification provision.

17 So an emergency does not include an event arising
18 from or related to unscheduled maintenance or malfunction
19 that results in the venting or flaring of natural gas by an
20 upstream operator. Basically if the operator, eventually if
21 the operator doesn't comply with the notification
22 requirement, it's not -- they don't get to call it an
23 emergency.

24 COMMISSIONER KESSLER: That makes sense.

25 CHAIRWOMAN SANDOVAL: That makes sense because

1 that notification provision is key for preventing waste on
2 the production operator's side.

3 COMMISSIONER KESSLER: Right.

4 CHAIRWOMAN SANDOVAL: So I think that's a
5 critical edition.

6 COMMISSIONER ENGLER: Correct.

7 CHAIRWOMAN SANDOVAL: Approval of (4).

8 COMMISSIONER KESSLER: Yes.

9 CHAIRWOMAN SANDOVAL: (5), okay, what do we do
10 here? And I think we created another --

11 COMMISSIONER KESSLER: I think we bumped it down
12 a line.

13 CHAIRWOMAN SANDOVAL: Okay. So what we did is,
14 the operator's negligence -- okay, Mr. Moander we want to
15 mimic what we did in 27, so on (5), it's just going to say
16 the operator's negligence, and then including it's just
17 going to be a new line, so, Chris, create a new (6).

18 COMMISSIONER KESSLER: Yes.

19 CHAIRWOMAN SANDOVAL: Get rid of the "including"
20 and "a," so it starts with "recurring equipment failure."
21 Okay. All right. So it should say, "recurring equipment
22 failure" with occurring (X) and (D) --

23 COMMISSIONER ENGLER: And (Y).

24 CHAIRWOMAN SANDOVAL: And what's the --

25 MR. MOANDER: So we did not, I realized there is

1 some highlights in there that we did not cycle back to. I
2 don't know that we made a final decision.

3 CHAIRWOMAN SANDOVAL: No. We were going to mimic
4 what we did in (7), so we needed to circle back to that. So
5 let's just, on the record, say that these changes are for
6 Part 27 and 28 regarding this since they are identical, and
7 the reasoning for both industries is identical.

8 So it should be recurring equipment failure four
9 or more times with a single reporting area pursuant to
10 Subsection A of 19.15.28.9 NMAC experienced by the operator
11 within the preceding 30 days.

12 And that would be basically identical to what we
13 would say in 19.15.27 -- 27.7 -- what? Hold on -- 27.7 --

14 COMMISSIONER KESSLER: 7.B.

15 CHAIRWOMAN SANDOVAL: 7.A.

16 MR. MOANDER: All right. Give me just a moment
17 to get this tidied up. I'm checking with 27 now. And in
18 27 --

19 CHAIRWOMAN SANDOVAL: 27 should be identical
20 except the citation should be 19.15.27.7 -- no. It would
21 be -- we have to check the citation on that. It basically
22 needs to refer to the single reporting area, so we want the
23 language to be identical, except in 27 the citation needs to
24 point to the part in Part 27. And in part 29 it needs to
25 point to -- 28 needs to point to 19.15.28.10.

1 MR. MOANDER: Is that Subsection A on 10?

2 CHAIRWOMAN SANDOVAL: I can't see what you are
3 doing because you are jumping around so much.

4 MR. MOANDER: Let me take a look.

5 CHAIRWOMAN SANDOVAL: 19.15.28.10 NMAC because
6 that's what defines the reporting area.

7 MR. MOANDER: Subsection -- so this is the
8 citation here, so Subsection A, that looks -- all right.

9 CHAIRWOMAN SANDOVAL: Yes.

10 MR. MOANDER: All right. Let me get back to the
11 top.

12 HEARING EXAMINER ORTH: Madam Chair, at some
13 point -- I don't want to interrupt your momentum here, but
14 at some point I think it would be worthwhile to revisit some
15 of the language from, from 9.A that you now are putting in
16 to 28. And it would just be clarification of what you had
17 back in 9.A, but I don't know if you want to do that now or
18 you just want to keep your momentum and we can do it --
19 because it's just wordsmithing.

20 CHAIRWOMAN SANDOVAL: Why don't we reevaluate it
21 in here and anything that's left over we can go back to.

22 HEARING EXAMINER ORTH: Okay. Sorry. So the
23 point, for example, a reference to a 2021 baseline doesn't
24 make sense insofar as you have effectively extended the
25 baseline as in 2022, for example.

1 CHAIRWOMAN SANDOVAL: Where are you talking about
2 this point?

3 HEARING EXAMINER ORTH: 9.A.

4 CHAIRWOMAN SANDOVAL: In Part 27?

5 HEARING EXAMINER ORTH: Yes.

6 CHAIRWOMAN SANDOVAL: I don't -- I don't know if
7 I want to go back yet.

8 HEARING EXAMINER ORTH: I'm sorry. I just wanted
9 to speak up and then maybe just have a placeholder. That's
10 all.

11 CHAIRWOMAN SANDOVAL: Okay, that works.

12 HEARING EXAMINER ORTH: Thanks.

13 CHAIRWOMAN SANDOVAL: Okay.

14 MR. MOANDER: I have made those corrections, Part
15 27, for the definition on emergency.

16 CHAIRWOMAN SANDOVAL: Great. And the reason we
17 want to do that is what we documented as is on the Part 27,
18 we went over this rather extensively, so that justification
19 still applies to Part 28.

20 Okay. And same thing for Number (6). I think we
21 want to, well, now new Number (7). I think we want to
22 mirror what we did in Part 27, which is to say (4) -- I
23 don't know where we are now on the screen.

24 MR. MOANDER: Sorry. This is 27.

25 CHAIRWOMAN SANDOVAL: Thank you. It should be

1 (4).

2 COMMISSIONER KESSLER: In 28 it should be (4),
3 Part 28 --

4 CHAIRWOMAN SANDOVAL: Within the preceding 30
5 days.

6 MR. MOANDER: Let me just pull this language.
7 All right.

8 CHAIRWOMAN SANDOVAL: And that will be identical
9 to what we did in Part 27, and again, all of the
10 justifications that were discussed in Part 27 apply directly
11 to Part 28.

12 Any objection, Dr. Engler?

13 COMMISSIONER ENGLER: No, I'm with you.

14 CHAIRWOMAN SANDOVAL: And so we are rejecting
15 NMOGA's proposal for the exact same reason as was reflected
16 in Part 27.

17 Again, I think we want to mimic what was in Part
18 27, and, for all the reasons stated there, accept those
19 changes.

20 Gathering pipeline, this one is new. No comments
21 by other parties. I think that is a very simple definition,
22 very clear, easy to follow and accurate.

23 CHAIRWOMAN SANDOVAL: Any objection, Dr. Engler?

24 COMMISSIONER ENGLER: No. It's a gathering
25 pipeline. It's a pipeline that gathers. Thanks. I'm good.

1 CHAIRWOMAN SANDOVAL: Okay. Malfunction, again,
2 we want to mimic what was in Part 27, and for all the
3 reasons stated there, we agree with the removal of and
4 requires (unclear).

5 COMMISSIONER ENGLER: Correct.

6 CHAIRWOMAN SANDOVAL: Natural gas gathering
7 system, this is a new one. I didn't after the more clear
8 word "from," I'm not sure from in which direction would be
9 unclear in my mind "after," which isn't clear, but -- and so
10 yeah, that's the very definition of a gathering system,
11 custody transfer point to the -- to the gas processing
12 plant. So I think those are perfect definitions and align
13 with testimony as to what the intent of what it should be.

14 COMMISSIONER ENGLER: I agree. It's very clear.

15 MR. MOANDER: Commissioner Kessler?

16 COMMISSIONER KESSLER: Agreed, yes.

17 CHAIRWOMAN SANDOVAL: All right. Vent or
18 venting, changes that were proposed by NMOGA previously and
19 the Commission did not accept, and for all of the reasons we
20 described during the discussion in Part 27, and with the
21 effort to align the rules, the vent or venting definition
22 should remain unchanged as in Part 27.

23 COMMISSIONER KESSLER: Agreed.

24 COMMISSIONER ENGLER: Also agreed.

25 CHAIRWOMAN SANDOVAL: All right. 19.15.28.8, no

1 changes by either parties. I'm trying to see if it
2 mimics -- I think the change we want to do is just to mimic
3 what we did in Part 27 and say, "The operator has a general
4 duty to maximize the recovery of natural gas."

5 COMMISSIONER ENGLER: Gather.

6 CHAIRWOMAN SANDOVAL: "Maximize the gathering of
7 natural gas by minimizing" -- it should be by minimizing.

8 MR. MOANDER: In 27 we've got that technically
9 feasible language, it looks like, we were going to circle
10 back to. I believe Dr. Engler had a problem with that, or
11 if I recall correctly.

12 CHAIRWOMAN SANDOVAL: We weren't sure if we were
13 going to change it yet. I don't want to go there yet.

14 MR. MOANDER: Okay.

15 CHAIRWOMAN SANDOVAL: That's on the table. Now I
16 note it says, the operator should flare rather than vent
17 natural gas when flaring is not technically feasible, it
18 seems like we say it opposite in Part 27. I don't know why
19 it's not mimicking.

20 MR. MOANDER: In all circumstances the operator
21 shall flare rather than vent natural gas except when flaring
22 is technically --

23 CHAIRWOMAN SANDOVAL: In one rule says
24 technically infeasible, and one rule it says technically
25 feasible.

1 MR. MOANDER: I read that as the same. It's just
2 generally --

3 CHAIRWOMAN SANDOVAL: I would prefer to mimic and
4 say -- keep what we have in 27 and just say it's technically
5 infeasible. I think we should keep it as consistent as
6 possible. Otherwise, I'm good with all the changes. They
7 match with Part 27 and both share the same intent.

8 COMMISSIONER KESSLER: Yes, I agree.

9 MR. MOANDER: Dr. Engler?

10 COMMISSIONER ENGLER: Yes, good.

11 CHAIRWOMAN SANDOVAL: C, no changes from either
12 of the parties. Removing (1), aligned with what we did --

13 COMMISSIONER KESSLER: Agree.

14 CHAIRWOMAN SANDOVAL: -- in the other rule.

15 COMMISSIONER KESSLER: Yes. We discussed the
16 reasons for that.

17 CHAIRWOMAN SANDOVAL: Yes. So -- never mind.
18 Sorry. I mean, they are not technically -- they are
19 slightly different. Oh, this is going to align with a
20 different section.

21 COMMISSIONER KESSLER: Yes, the equivalent
22 section is --

23 CHAIRWOMAN SANDOVAL: Perfect. I knew this
24 language looked familiar. Okay. So this would be
25 equivalent to Part B and Part D. So 19.15.28.8.B will be

1 most similar to 19.15.27.8.D. We removed (1) in 27.D and I
2 think we should remove (1) under B.

3 COMMISSIONER ENGLER: Yes.

4 CHAIRWOMAN SANDOVAL: Same thing on now the new
5 Number (1). The language should only say during emergency
6 or malfunction for all of reasons that were stated on 27.

7 MR. MOANDER: Commissioners Kessler and Engler,
8 are you in agreement with that?

9 COMMISSIONER ENGLER: Yes.

10 COMMISSIONER KESSLER: Yes.

11 CHAIRWOMAN SANDOVAL: The next one is going to be
12 different. This is going to be most similar to B(4).

13 COMMISSIONER KESSLER: Oh, yes. It looks like
14 it should be -- I agree we should take out the word
15 "scheduled" from Subsection (a) for the reasons that we
16 previously discussed. We accepted all of those changes.

17 CHAIRWOMAN SANDOVAL: Except we removed routed to
18 a flare control device because the thief hatch -- thief
19 hatch should be closed regardless if it's on a tank with a
20 control device or not. The other changes in there are good.
21 And also in (c) and (d), those changes align with Part 27
22 and are approved.

23 MR. MOANDER: Can I have all the Commissioners
24 pipe in on all of these comments.

25 COMMISSIONER KESSLER: I agree.

1 COMMISSIONER ENGLER: I was just waiting for --
2 they are all good.

3 COMMISSIONER KESSLER: You may want to add in
4 (h), the preference for operations of valves, flanges or
5 connectors that are not the result of inadequate equipment
6 design or maintenance? I think that applies.

7 CHAIRWOMAN SANDOVAL: It does. Where is the
8 equivalent?

9 COMMISSIONER KESSLER: On (h.)

10 CHAIRWOMAN SANDOVAL: We need to add -- yes,
11 perfect.

12 NMOGA had the same comments here that we
13 discussed on the fugitive emissions components in their
14 original request. So the same discussion we had in Part 27
15 very much applies here as well, and that is managed by this
16 new (h).

17 COMMISSIONER ENGLER: That's good.

18 COMMISSIONER KESSLER: Yes.

19 CHAIRWOMAN SANDOVAL: And then part (1) is
20 critical, we talked about the oxygen issues, et cetera, and
21 so for the same reasons as in Part 27, that edition is
22 necessary.

23 COMMISSIONER KESSLER: Yes, agree.

24 COMMISSIONER ENGLER: Yes.

25 MR. MOANDER: I assume there is no objection

1 shifting the or from (j) to (k)?

2 COMMISSIONER ENGLER: That's good. That's
3 necessary.

4 CHAIRWOMAN SANDOVAL: That's fine. All right.

5 COMMISSIONER KESSLER: Performance standards --
6 (inaudible).

7 CHAIRWOMAN SANDOVAL: What?

8 COMMISSIONER KESSLER: 27.E, performance
9 standards, and that's what we have some in Section C.

10 CHAIRWOMAN SANDOVAL: It is close.

11 MR. MOANDER: So Part 27, that was highlighted,
12 that was something to circle back to.

13 CHAIRWOMAN SANDOVAL: We wanted it just to be
14 called performance standards.

15 MR. MOANDER: So be it.

16 CHAIRWOMAN SANDOVAL: Done.

17 COMMISSIONER ENGLER: Correct.

18 CHAIRWOMAN SANDOVAL: Thank you.

19 MR. MOANDER: All right.

20 CHAIRWOMAN SANDOVAL: I need -- okay. There is
21 changes from NMOGA on performance standards. I don't see
22 any comment on here. Chris, (c)?

23 COMMISSIONER ENGLER: Performance standards
24 (4)(a)(i), we changed that visually inspecting externally.

25 CHAIRWOMAN SANDOVAL: Right. So you want it to

1 generally address the same --

2 COMMISSIONER ENGLER: Where are you at?

3 CHAIRWOMAN SANDOVAL: On (1), C(1).

4 COMMISSIONER KESSLER: I remember this
5 discussion. This was --

6 CHAIRWOMAN SANDOVAL: It was -- yeah, it was the
7 issue of like by the time they are out compliance they are
8 already out of compliance, so what's the point.

9 COMMISSIONER KESSLER: Right, what's the point of
10 having a plan.

11 CHAIRWOMAN SANDOVAL: Yeah.

12 COMMISSIONER KESSLER: There shouldn't be a plan.

13 CHAIRWOMAN SANDOVAL: Yeah. Where are we at?
14 Give me a second. I guess I don't understand the entire
15 concept of this even with the testimony. Basically what
16 they want to do is they want to monitor a gas capture
17 percentage, but deny compliance then submit a plan. But the
18 whole point of the plan is to ensure they are not in
19 compliance to begin with.

20 COMMISSIONER KESSLER: That they are always in
21 compliance.

22 CHAIRWOMAN SANDOVAL: That they are always in
23 compliance. So I, I don't believe the testimony was very
24 compelling. I just sort of walked in circles of, wasn't the
25 point of having the plan to make sure you have a plan?

1 Let's see.

2 I also, you know, they say there could be
3 potential conflicts with other state, federal agencies,
4 inspection, et cetera. I mean, I don't think so, because it
5 says the plan -- the Division says, "The plan should include
6 procedures to reduce leaks and releases," and then it gives
7 examples it doesn't require. It says, "Such as routine
8 maintenance, cathodic protection, corrosion control, liquids
9 management and integrity management," but those are just
10 examples. It's a non-exclusive list.

11 So I don't think it ties you to require you to
12 some sort of cathodic control pursuant to whatever -- let me
13 say this another way. If you have some cathodic control
14 requirement from some other regulatory body, there is no
15 reason why this would contradict that. That cathodic
16 protection control program that is required by the other
17 agency or whatever could very well help you meet these
18 requirements, so I don't see how it would be a conflict,
19 because it's a non-inclusive list -- or non-exclusive list
20 and it doesn't matter how you do it.

21 Now if it said you have to do it pursuant to API
22 standard blah, blah, blah, blah, blah, sure there could
23 potentially be a conflict, but not the way the division's
24 rule is written as proposed. So I totally disagree with
25 NMOGA's, the testimony and statements here.

1 COMMISSIONER KESSLER: The rebuttal says
2 (unclear).

3 CHAIRWOMAN SANDOVAL: I think I remember a
4 rebuttal statement on this.

5 COMMISSIONER KESSLER: I agree with what you just
6 said, there's adequate testimony from the Division in the
7 record to reflect the need, and the planned goal sets the
8 time to accomplish. So I would propose leaving in place
9 OCD's language in C(1), as well as subparts (a), (b) and
10 (c).

11 CHAIRWOMAN SANDOVAL: NMOGA's -- I agree.
12 NMOGA's -- I'm sorry. OCD's rebuttal on this says, NMOGA
13 argues that a plan, which in terms of a mitigation plan
14 should be required only when the operator (unclear). This
15 undermines the point of the operations plan which is to
16 identify potential leaks and releases and (unclear) of
17 recurring equipment failures before they occur. (unclear)
18 afterwards is to ensure compliance with the capture
19 requirement.

20 That's the point of the gas -- that's the point
21 of gas management plan. If the operator does not do the
22 plan until after the release, the damage is already done and
23 would be compounded because the plan wouldn't be done until
24 after the leak. It does little good to plan after the
25 event.

1 NMOGA's Witness Rynerman also argues that OCD
 2 does not have capacity to review plans. The assertion is
 3 (unclear) engineering bureau routinely reviewed this project
 4 as complicated as pipelines (unclear). Finally to the
 5 extent that NMOGA argues that OCD does not have the
 6 statutory authority to require an operation plan, this is
 7 not true. OCD has the authority to adopt the rules that are
 8 reasonably necessary to prevent waste, which is the point of
 9 the operations plan, and the requirement is not pre-empted
 10 by federal law even if it is not (unclear)."

11 I totally agree that.

12 COMMISSIONER KESSLER: Yes, I agree.

13 CHAIRWOMAN SANDOVAL: Therefore reject all of
 14 NMOGA's changes in (1)(a) and (b).

15 COMMISSIONER KESSLER: Yes, I agree.

16 CHAIRWOMAN SANDOVAL: Okay, so now -- yes, Dr.
 17 Engler?

18 COMMISSIONER ENGLER: That was really thorough.

19 CHAIRWOMAN SANDOVAL: Thank you. Sorry, I got
 20 ahead of you.

21 Okay. Let's look at the AVO. All right. So I
 22 think we want to make sure to mirror what we did. And so,
 23 Chris, in (4)(a)(i), it should just read, "Comprehensive
 24 external visual inspection." Perfect. And then will not a
 25 part in this for stripper wells.

1 COMMISSIONER KESSLER: No, but NMOGA does propose
2 in (4) to have the inspection be monthly rather than weekly.

3 CHAIRWOMAN SANDOVAL: And they also proposed to
4 have the same language about if there is another program by
5 another department, then you don't have to do this. And for
6 all of the reasons discussed in Part 27 and did not include
7 that, I think that applies here.

8 COMMISSIONER KESSLER: Yes, I agree.

9 COMMISSIONER ENGLER: I agree.

10 CHAIRWOMAN SANDOVAL: And for the same reasons
11 that we are not changing the frequency to monthly as
12 reflected in Part 27, particularly since we are applying
13 (i), weekly seems appropriate and will mirror all of the
14 reasons and actions we took in Part 27.

15 COMMISSIONER ENGLER: Agreed.

16 COMMISSIONER KESSLER: Agree.

17 CHAIRWOMAN SANDOVAL: (5), this one is unique --
18 no, maybe not. Yeah, it is.

19 MR. MOANDER: What was the weekly language you
20 just discussed?

21 CHAIRWOMAN SANDOVAL: NMOGA proposes to change it
22 to weekly in (4). It's not in the Division's proposal. We
23 are just saying we do not agree -- I'm sorry, NMOGA proposes
24 to change it to monthly. We want it to continue to be
25 weekly as proposed.

1 MR. MOANDER: Okay, perfect.

2 CHAIRWOMAN SANDOVAL: All right, (5).

3 COMMISSIONER KESSLER: Beginning with the
4 Division's proposal, I like the added "aerial visual
5 inspection". I think that's a good method for performing
6 monitoring.

7 CHAIRWOMAN SANDOVAL: But then wouldn't that
8 almost necessitate removing the word "instrument" because
9 inherently aerial visual inspection may not utilize an
10 instrument.

11 COMMISSIONER KESSLER: I believe that's correct.
12 NMOGA cites the transcript and explains why the word
13 instrument should be taken out, and the Division did not
14 foresee a need for this change. If there is something in
15 the --

16 COMMISSIONER ENGLER: Just take the word
17 instrument out?

18 CHAIRWOMAN SANDOVAL: Basically yes, everything
19 else is all good. I agree with that. I mean, if you are
20 going to include AVO, I mean it's says even an AVO tech or
21 aerial visual inspection, both of those necessitate an
22 instrument, so it's almost contradictory.

23 COMMISSIONER ENGLER: The key is in (unclear).

24 CHAIRWOMAN SANDOVAL: Yeah.

25 CHAIRWOMAN SANDOVAL: I agree.

1 COMMISSIONER KESSLER: I agree.

2 MR. MOANDER: So Number 5 is accepted?

3 CHAIRWOMAN SANDOVAL: Excluding the word
4 instrument, yes.

5 MR. MOANDER: All right.

6 CHAIRWOMAN SANDOVAL: Okay. I think we need to
7 go back to that section and we need to add, I think, the
8 same two editions that we added in 27 about the facilities
9 construction to minimize waste, and operators have an
10 obligation to minimize waste and resolve emergencies, I
11 think those apply here as well.

12 COMMISSIONER ENGLER: Yes, yeah.

13 MR. MOANDER: Is that all?

14 CHAIRWOMAN SANDOVAL: Yes.

15 COMMISSIONER ENGLER: Yes.

16 CHAIRWOMAN SANDOVAL: Ms. Orth, are there any
17 wordsmithing concerns you have on these while we are here?

18 HEARING EXAMINER ORTH: No, not on these. It was
19 9.A mostly, which was the, you know, accounting business.

20 CHAIRWOMAN SANDOVAL: Okay. All right.

21 MR. MOANDER: Commissioners, does this look good?
22 I believe that's in line --

23 CHAIRWOMAN SANDOVAL: Yes.

24 MR. MOANDER: Okay.

25 CHAIRWOMAN SANDOVAL: Yes. And for all the

1 reasons we stated previously in E(7) would apply in the
2 exact same way here.

3 COMMISSIONER KESSLER: Yes, I agree.

4 COMMISSIONER ENGLER: Yes.

5 CHAIRWOMAN SANDOVAL: So on to D. Nothing in D
6 from Climate Advocates. Nothing in D from NMOGA.

7 On to -- I agree particularly on Number (2)
8 because the Division is allowing for (unclear) notification
9 initially 12 hours is more appropriate than 24. I think it
10 is also important that there should be follow-up written
11 confirmation of the verbal notification including the date,
12 time, person, the telephone number of whom verbal
13 notification was given. I think that allows them to react
14 the quickest, make the phone call, work to solve the problem
15 and then do the documentation on the back end if needed.

16 COMMISSIONER KESSLER: Yes, I agree.

17 COMMISSIONER ENGLER: Yes, I agree.

18 CHAIRWOMAN SANDOVAL: All right. E, E which will
19 mimic Part 27.

20 MR. MOANDER: We adjusted the caption of that to
21 measurement or estimation of vented or flared natural gases.

22 CHAIRWOMAN SANDOVAL: I agree with that for all
23 the same reasons as before.

24 MR. MOANDER: Okay.

25 CHAIRWOMAN SANDOVAL: And Number (1) for the same

1 reasons before, the edition "or estimate" is appropriate.

2 Same with (3). And the language in E(5) here
3 mirrors F(5) in Part 27. So for all the reasons stated
4 previously, that change should be accepted.

5 MR. MOANDER: Just to be sure, it says E(3), no
6 Commissioner has an objection to that?

7 COMMISSIONER KESSLER: No objection.

8 MR. MOANDER: And is that -- are those non
9 objections based on the same premises from Part 27?

10 COMMISSIONER KESSLER: That's correct.

11 COMMISSIONER ENGLER: That's true.

12 COMMISSIONER KESSLER: They are identical.

13 CHAIRWOMAN SANDOVAL: Okay. F, so this would, I
14 think, somewhat mimic G. And so that alignment of the title
15 of 28.F and 27.G, I think, makes sense. And Number (1), I
16 think the title there, something in here about the bolding
17 and formatting is the same.

18 MR. MOANDER: I will take care of that, Madam
19 Chair.

20 CHAIRWOMAN SANDOVAL: But other than the bolding,
21 formatting, the small language changes, "an emergency, a
22 malfunction," and a comma, identical to the previous Part
23 27, and for all of those reasons the language should be
24 accepted.

25 Any objection?

1 COMMISSIONER KESSLER: No objection.

2 COMMISSIONER ENGLER: No objection.

3 CHAIRWOMAN SANDOVAL: F(1)(a), this again mirrors
4 what was done in Part 27. And for all the reason described
5 in Part 27.G, (1)(a) should be accepted.

6 COMMISSIONER KESSLER: Yes, I agree with that.

7 COMMISSIONER ENGLER: Which one are you on, A,
8 (1)(a)?

9 CHAIRWOMAN SANDOVAL: F(1)(a).

10 COMMISSIONER ENGLER: Yeah.

11 CHAIRWOMAN SANDOVAL: Okay. F(1)(a)(i), we need
12 to remove "appropriate district office" language here to
13 align it. Otherwise it mirrors Part 27 and mirrors the
14 change in Part F(1)(a).

15 COMMISSIONER KESSLER: I agree to those changes.

16 COMMISSIONER ENGLER: (I)?

17 CHAIRWOMAN SANDOVAL: I would say the same in
18 (ii), F(1)(a)(ii).

19 COMMISSIONER ENGLER: Yes.

20 CHAIRWOMAN SANDOVAL: And (iii) is just making
21 sure to remove the appropriate district office language.

22 COMMISSIONER KESSLER: Yes. And then Climate
23 Advocates had a similar proposal for notifying the public
24 for a major release. We talked about that; right?

25 CHAIRWOMAN SANDOVAL: Yes. I mean I think we

1 talked about this pretty extensively in Part 27. And for
2 all the same reasons here, you know, I think, one, there
3 would need to be a legal evaluation as to whether or not the
4 OCD has the jurisdiction to do that. And pending that sort
5 of legal analyses at a later date, the more appropriate
6 place may be in Part 29 to make sure we don't have two rules
7 with different requirements. And so that is not accepted at
8 this time.

9 COMMISSIONER ENGLER: Agreed.

10 COMMISSIONER KESSLER: Agreed.

11 CHAIRWOMAN SANDOVAL: (b) would be a unique
12 category for this rule.

13 COMMISSIONER KESSLER: Should we go to (b)(iv)
14 first?

15 MR. MOANDER: Yeah, (b)(iv), I believe needs some
16 attention.

17 CHAIRWOMAN SANDOVAL: Where are we? What
18 (b)(iv)?

19 COMMISSIONER KESSLER: Operator shall provide and
20 certify the accuracy of the following information in the
21 form C-129. (b)(iv) has the same change, compositional
22 analysis.

23 CHAIRWOMAN SANDOVAL: Oh, yes, yes. I'm sorry, I
24 was on --

25 COMMISSIONER KESSLER: I would agree with the

1 proposed revision which is the same as in Part 27 accepted
2 previously.

3 COMMISSIONER ENGLER: Agree.

4 COMMISSIONER KESSLER: Similar -- I think (d) is
5 already accepted.

6 CHAIRWOMAN SANDOVAL: Yeah.

7 COMMISSIONER KESSLER: I think we talked about
8 that for 27 and it was agreed.

9 CHAIRWOMAN SANDOVAL: It aligns.

10 COMMISSIONER KESSLER: Yes.

11 COMMISSIONER ENGLER: Correct, both of you.

12 CHAIRWOMAN SANDOVAL: Okay, (2). Let's see,
13 F(2). Okay, so we are going to need to change the date.
14 All right, so it should read, "For each natural gas
15 gathering system at which venting and flaring occurred, the
16 operator shall separately report the volume of vented
17 natural gas and the volume of flared natural gas for each
18 month in each category listed below."

19 All of that is accepted and aligns with what is
20 said in 27.

21 COMMISSIONER KESSLER: You know what, Director,
22 I'm sorry to do this. It looks like this rule --

23 REPORTER: Commissioner Kessler, can you report
24 that please?

25 COMMISSIONER KESSLER: (unclear) Suggestion under

1 Section (b), little (b) from Climate Advocates, (viii) and
2 (ix) --

3 CHAIRWOMAN SANDOVAL: You are right.

4 COMMISSIONER KESSLER: We've got an (viii) or
5 (ix) they proposed (unclear).

6 CHAIRWOMAN SANDOVAL: That's a good point. And
7 these are identical to what was proposed in Part 27, and we
8 requested that if we were to leave these in here it would
9 really sort of pigeonhole the Division into these categories
10 when there could be essentially more that could be added on
11 a form development.

12 So for all the reasons in Part 27 that we
13 discussed, they also apply here and in Part 28.F(1)(b), all
14 of those changes from Climate Advocate should not be
15 accepted.

16 COMMISSIONER KESSLER: I agree.

17 COMMISSIONER ENGLER: Roman numeral (vii),
18 (viii), (ix)?

19 CHAIRWOMAN SANDOVAL: Yes. All right. So now
20 going to (2). So everything, Mr. Moander, up until the
21 word -- everything up until, "for each month in each
22 category listed below," all of that should be accepted. It
23 aligns with Part 27.

24 What I'm seeking here, in order for us to align
25 with Part 27, we need to update the date. Let me know when

1 you are ready.

2 MR. MOANDER: I am ready, Madam Chair.

3 CHAIRWOMAN SANDOVAL: Okay. "Beginning October
4 1, 2021, the operator shall gather data for quarterly
5 reports in a format specified by the Division and submit by
6 February 15, 2021 for the fourth quarter, and May 15, 2022
7 for the first quarter." And then it should say, beginning
8 April 2022.

9 And then shall should align the dates and the
10 time lines with Part 27 for all reasons we discussed in Part
11 27 regarding effective date of the rule, timing and data
12 quality issues, so this aligns everything and should be
13 accepted.

14 COMMISSIONER KESSLER: I agree.

15 COMMISSIONER ENGLER: I agree.

16 CHAIRWOMAN SANDOVAL: All right. Going through
17 the list -- I don't know if I just want to say that in Part
18 (2), NMOGA proposed a (unclear) but we did not accept that
19 change in Part 27, and I propose to not accept that change
20 here because we're helping align the dates so the operators
21 have time to get the system in place, and so that provision
22 is not accepted.

23 COMMISSIONER KESSLER: That's correct.

24 COMMISSIONER ENGLER: I agree.

25 CHAIRWOMAN SANDOVAL: Okay. Going into

1 categories. All right. In (2)(b) we need to align that to
2 have the -- to say, "non-scheduled maintenance or
3 malfunction including abnormal operation of equipment."

4 And that's aligns with Part 27. For all of the
5 reasons discussed in Number 27, that edition is important.

6 MR. MOANDER: Just to clarify, we changing the
7 and to or.

8 CHAIRWOMAN SANDOVAL: Which and?

9 MR. MOANDER: So (2)(b), non-scheduled
10 maintenance?

11 CHAIRWOMAN SANDOVAL: Yes. Thank you.

12 CHAIRWOMAN SANDOVAL: Commissioners, do you
13 agree?

14 COMMISSIONER ENGLER: Yeah.

15 COMMISSIONER KESSLER: Yes.

16 CHAIRWOMAN SANDOVAL: And then we are going down,
17 and this category would be (g), the word "uncontrolled"
18 should be removed from storage tanks. It should just be
19 storage tanks.

20 MR. MOANDER: Any objection?

21 COMMISSIONER KESSLER: Agreed.

22 COMMISSIONER ENGLER: Agreed.

23 CHAIRWOMAN SANDOVAL: That aligns it with Part
24 27. And then (i) in Part 28, improperly closed or

25 maintained thief hatches on tanks, we should remove, "routed

1 to a flare or control device in order to align with Part 27
2 for all the reasons discussed already.

3 COMMISSIONER KESSLER: Agreed.

4 COMMISSIONER ENGLER: Yes.

5 CHAIRWOMAN SANDOVAL: And then (j) we need to
6 page sure to align it with (m) in Part 27. Are you ready,
7 Mr. Moander. Oh, you are already ahead of me.

8 MR. MOANDER: I'm just kind of doing the work
9 here.

10 CHAIRWOMAN SANDOVAL: I was going to say, we
11 could copy paste that.

12 MR. MOANDER: And that was (j); right?

13 CHAIRWOMAN SANDOVAL: (j). Okay. All right.
14 (3), in order to align with the Division's or with the
15 proposed changes in 27, it should say, "Publish on the
16 Division's website an operator's," that will align with Part
17 27 and give people a clear place to go.

18 There are some proposals in (3)(a).

19 MR. MOANDER: Is all the language approved in
20 (3).

21 COMMISSIONER ENGLER: Yes, it is.

22 CHAIRWOMAN SANDOVAL: Yes.

23 COMMISSIONER KESSLER: Yes.

24 CHAIRWOMAN SANDOVAL: All right. (3)(a), this
25 language is in part -- the edition, and you are saying, no,

1 this is not the the same -- the language is on the top.

2 COMMISSIONER KESSLER: It's the same concept as
3 the --

4 CHAIRWOMAN SANDOVAL: Yeah's, it's the same --
5 Dr. Engler, it's on that additional?

6 COMMISSIONER ENGLER: Yes. It's the same.

7 CHAIRWOMAN SANDOVAL: Yes. I think that this
8 simplifies it and makes it clearer, the proposed language
9 that was in OCD's additional changes and should be adopted.

10 COMMISSIONER ENGLER: I agree.

11 COMMISSIONER KESSLER: Yeah, I agree.

12 CHAIRWOMAN SANDOVAL: And then same thing with
13 8.F(3)(c). I'm not -- I think that these things are the
14 same as the issues in Part 27.

15 COMMISSIONER KESSLER: That's what I was saying,
16 the process is the same --

17 CHAIRWOMAN SANDOVAL: Yes.

18 COMMISSIONER ENGLER: That's correct.

19 CHAIRWOMAN SANDOVAL: So that basically
20 accomplishes what NMOGA was trying to do as they tried to do
21 with Part 27, but this does make it clearer -- the
22 Division's changes make it clearer and should be adopted,
23 and NMOGA's proposed should not for all of the same reasons
24 that were in Part 27.

25 COMMISSIONER ENGLER: Agreed.

1 COMMISSIONER KESSLER: Agreed.

2 CHAIRWOMAN SANDOVAL: All right. So now we are
3 on (4), which is the same change that was in the Division's
4 proposal. They moved that to a later section, and so that
5 change aligns with Part 27 and should be accepted.

6 COMMISSIONER KESSLER: I agree.

7 COMMISSIONER ENGLER: Yes, yes.

8 CHAIRWOMAN SANDOVAL: All right. We need made it
9 to Part 9. All right.

10 Ms. Orth, is this section you are concerned about
11 the language -- oh, wait hold on. Never mind. Give it a
12 second. Let's skip Part 10. Let's look at Part 9 first.
13 Location requirements is unique to this rule. NMOGA does
14 have a change in (2), I will just note. There are no
15 changes by Climate Advocates. I see no more changes in the
16 remainder of the rule by Climate Advocates.

17 All right. Okay, so location requirements.
18 Let's look at (2). So we should change this language to
19 no -- I actually agree with NMOGA's proposed --

20 (Overtalk.)

21 CHAIRWOMAN SANDOVAL: -- the effective date of
22 the rule. I don't think it's feasible to get this on the
23 effective date of the rule, but, you know, say the rule is
24 effective on May 31, they have 90 days to provide that. I
25 think that's (unclear).

1 I think the way they say it I like slightly
2 better, Mr. Moander. I'll just read it to you. It says,
3 "No later than 90 days after the effective date of this
4 rule." Yes, perfect. I think that's completely reasonable.
5 It would be impossible for an operator to have it ready and
6 submit it on the effective date of the rule.

7 COMMISSIONER KESSLER: Yes, I agree.

8 COMMISSIONER ENGLER: I agree as well.

9 CHAIRWOMAN SANDOVAL: Okay. Let's look at C real
10 quick just because there is a May 31 date. So this may be
11 fine going forward, "No later than May 31 of each year."

12 COMMISSIONER KESSLER: Yeah, NMOGA proposes to
13 strike this whole --

14 CHAIRWOMAN SANDOVAL: They do? Oh, yes. Thank
15 you.

16 I think NMOGA says in here, "It is undisputed the
17 Division can easily track or" -- my technical knowledge of
18 the OCD's IT systems, I think it is disputable that the OCD
19 has potentially the ability to track and (unclear), and I
20 just don't agree with that statement.

21 COMMISSIONER KESSLER: The Division -- there's
22 rebuttal to that proposal to delete the provision that OCD
23 believes that is prudent operators should be (inaudible.)
24 NMOGA witness further acknowledges (unclear).

25 CHAIRWOMAN SANDOVAL: The other issue, too, here

1 is, right, this is reporting under 50 MCF. And under Part
2 29, the, you know, the de minimis is 50 MCF for gas
3 releases. But there is no de minimis preventing amounts on
4 C-115 reports. If you vent one MCF of gas, you should
5 include that in your report.

6 So I don't think that -- I think this is
7 important to make sure that all those vents are captured.
8 You know, they say that -- NMOGA says that -- NMOGA said the
9 Division (unclear) about de minimis releases. The Division
10 has long recognized as what (unclear) MCF does not warrant
11 this additional administrative burden.

12 Now, I would argue if you have 500 releases of 25
13 MCF, or 5,000, those can add up very quickly. And so I
14 think that information is very important, and I think the
15 provision is very important.

16 COMMISSIONER KESSLER: (unclear) I would agree
17 that provision for the reason we stated. And I think that
18 gas releases, it should be on the operators to be able to
19 say whether the release are -- I don't know why that is
20 something that the operators think the Division should be
21 doing. So I agree that the language is important, and that
22 there is Division testimony in the record to support why
23 it's necessary.

24 COMMISSIONER ENGLER: Well, okay. For the sake
25 of brevity, I'll agree, but I find it somewhat disappointing

1 that because of the lack of the IT of the Division they are
2 not capable of doing it, therefore someone else can do it
3 for them. That's a pretty lame excuse, but I'll agree
4 that --

5 CHAIRWOMAN SANDOVAL: I mean, I would certainly
6 disagree with that statement. I believe that OCD also said
7 something and testified -- Mr. Powell's testimony in
8 rebuttal here, but it was also very hard to tie releases to
9 potential --

10 COMMISSIONER ENGLER: Locations.

11 CHAIRWOMAN SANDOVAL: -- to locations, yes, to
12 something meaningful, and that may be information that the
13 Division will not have, nor can they accurately do.
14 However, that is something that the operators can accurately
15 do. So I don't think it's purely an IT capability aspect of
16 it.

17 COMMISSIONER ENGLER: So if you put the location
18 data in, you think IT's capable of it?

19 CHAIRWOMAN SANDOVAL: Not just location data. I
20 think that would be (unclear) location data, but it has to
21 be tied to a facility and some of that information may not
22 be already be had.

23 COMMISSIONER ENGLER: Well, again, I accept the
24 change as is. Again, on the record, I will put my
25 statement --

1 CHAIRWOMAN SANDOVAL: Okay, well, I -- well, I
2 guess my question would be, we had an issue like this
3 previously. Should we do a vote?

4 COMMISSIONER ENGLER: Well, I'm not against it.
5 I told you I agree with the change.

6 MR. MOANDER: Well, I don't hear a conflict. Let
7 me -- I'm not clear what the change is.

8 CHAIRWOMAN SANDOVAL: Basically NMOGA proposes to
9 eliminate C.

10 MR. MOANDER: Okay. And then secondly, May 31 of
11 each year, there is a potential, if this rule isn't in
12 effect before then, and even if it is, I'm not sure it's the
13 the intent of the Division to put that type of tight
14 deadline on a producer.

15 CHAIRWOMAN SANDOVAL: I guess this is an update;
16 right? This is an update. They have already filed their
17 initial one the 90 days after the effective rule. This is
18 a --

19 MR. MOANDER: Oh, yeah, okay.

20 CHAIRWOMAN SANDOVAL: It might be more
21 appropriate to say July 1, no later than July 1 of each
22 year.

23 MR. MOANDER: Do we have a reason for that other
24 than --

25 CHAIRWOMAN SANDOVAL: I think just to align it

1 with the potential effective date of rule so you capture,
2 you know, a full year's worth of data, probably July 1 is
3 going to be a more accurate representation than May 31 might
4 be.

5 MR. MOANDER: Any objections to that amendment?

6 COMMISSIONER ENGLER: No, it's good.

7 CHAIRWOMAN SANDOVAL: Commissioner Kessler?

8 COMMISSIONER KESSLER: I agree.

9 CHAIRWOMAN SANDOVAL: D, I think we -- I mean
10 there was a very familiar version like this in Part 27 and I
11 think this mirrors the language. It's the confidentiality.

12 COMMISSIONER KESSLER: Yes, I agree with the
13 changes that the Division has made to accept Paragraph D,
14 basically just confidentiality is appropriate to the
15 (unclear) available for them later.

16 CHAIRWOMAN SANDOVAL: Okay.

17 COMMISSIONER ENGLER: I agree.

18 CHAIRWOMAN SANDOVAL: I agree. All right. Ms.
19 Orth, I feel like this is where you have a concern.

20 HEARING EXAMINER ORTH: Yes, thank you, Madam
21 Chair. So if we are going back to 10.A, and I trust that
22 the Commission would be referring to 9.A in Part 27. And
23 look back at the language in 9.A in Part 27, and do you see
24 the sentence that says, "In each calendar year between
25 January 1, 2022 and December 31, 2021"? And then you head

1 towards the language that was added there as part of your
2 discussion, when you look at the parenthetical 2021
3 baseline, I'm not sure that that's a good reference there
4 because, of course, you extended the baseline period into
5 2022. It's the timing. So I'm wondering if we could just
6 delete the reference to 2021. I mean, we are talking about
7 their baseline loss rate.

8 CHAIRWOMAN SANDOVAL: That makes complete sense
9 to me.

10 COMMISSIONER KESSLER: Yes.

11 HEARING EXAMINER ORTH: And one more change.
12 After the end of that sentence, the sentence "divided by
13 five," I believe we could both shorten and clarify your
14 intent there by simply replacing what's there with these
15 words, "Except that for 2022 only, an operator's annual
16 percentage of natural gas captured shall not be less than 75
17 percent."

18 I don't think we really need any of that
19 reference to 2023 and after, because it's obviously already
20 mentioned up above with the reference to January 2022 and
21 December 2026. You just don't need that.

22 CHAIRWOMAN SANDOVAL: I mean I guess I think we
23 were concerned about it like going into that year, but you
24 don't feel like there is that problem?

25 HEARING EXAMINER ORTH: I don't think so. I

1 think it's, what, redundant, I guess. And, Chris, if you
2 would put the word "only" after 2022. An operators annual
3 percentage of captured gas shall not be less than 70 -- I
4 would say, "shall not be less than 75 percent," just because
5 we use the shall language, just to be consist there.

6 CHAIRWOMAN SANDOVAL: I mean, that seems a lot
7 cleaner to me. I think it meets the original intent.

8 COMMISSIONER ENGLER: So just add, okay, on the
9 new version, "No less than 75 first of their annual natural
10 gas capture percentage"; right? Don't you need a reference
11 to what that 75 percent goes to?

12 HEARING OFFICER ORTH: The parenthetical there,
13 if you wanted to add a parenthetical, would be, you know,
14 2022 baseline loss rate minus the two percent divided by
15 five times 75 percent.

16 COMMISSIONER ENGLER: I will take that back. I
17 got it. I was missing something there. Never mind.

18 HEARING EXAMINER ORTH: Oh, okay.

19 COMMISSIONER ENGLER: I got it.

20 HEARING EXAMINER ORTH: All right. And Chris if
21 you would -- sorry -- just change --

22 COMMISSIONER ENGLER: It is cleaner.

23 CHAIRWOMAN SANDOVAL: It is a lot cleaner.

24 COMMISSIONER ENGLER: I'm good with it.

25 HEARING EXAMINER ORTH: Let's see, change must to

1 shall not be less than, please. Okay. Thanks.

2 CHAIRWOMAN SANDOVAL: I think that's a great
3 change.

4 HEARING EXAMINER ORTH: Thanks. It was bugging
5 me. I'm sorry.

6 CHAIRWOMAN SANDOVAL: That's okay.

7 COMMISSIONER ENGLER: That's good.

8 CHAIRWOMAN SANDOVAL: That's good, and I like
9 that change, and so we should make that in 19.15.28.9, it
10 still meets the Commission's intent, yet it is much cleaner
11 and clearer to operators.

12 COMMISSIONER KESSLER: Are we good on Section A?

13 MR. MOANDER: I think we got to address the
14 January date. That should be April q.

15 CHAIRWOMAN SANDOVAL: Yes. We should change all
16 of the dates in here, but by I was just looking, and I think
17 you could probably copy-paste directly from 19.15.27.9.A the
18 new language in 19.15.28.10. I don't see any difference.

19 MR. MOANDER: There is an administrative code
20 citation in here.

21 CHAIRWOMAN SANDOVAL: Okay. Well, other than
22 that, I don't see any difference. Any of the other
23 Commissioners?

24 (Overtalk.)

25 MR. MOANDER: Let me take one more look.

1 MR. MOANDER: I believe this is conformed almost.

2 I just need to stick in some --

3 MR. MOANDER: All right. I think we're there.

4 COMMISSIONER ENGLER: Is that correct? It seems
5 like before that the 2021 needs to be deleted. Because 2021
6 baseline lost rate, so the 2021 needs to go.

7 MR. MOANDER: There we go. There we go. All
8 right.

9 CHAIRWOMAN SANDOVAL: Thank you, Ms. Orth. That
10 was a great change. There were no edits by NMOGA to that
11 particular section. Are there any more -- 10.D under
12 accounting, but we're not there yet, has an additional
13 change from Mr. Ames.

14 MR. MOANDER: Hold on one second, A(3)?

15 CHAIRWOMAN SANDOVAL: Yeah, we haven't done that
16 one yet.

17 MR. MOANDER: Okay.

18 CHAIRWOMAN SANDOVAL: And these, I think, are
19 important because this is how the reading is going to -- I
20 think it's here. Mr. Craft, this is, I think, the parent
21 company issues. I think it's critical that we get this
22 right.

23 It is common practice for there to be a million
24 MLPs in the midstream world, and I guess I don't -- I would
25 have concerns with it being reported under individual MLPs,

1 and not rolling out to parent companies could specifically
2 harm some of these other ancillary requirements that I think
3 would get tied into this, too, such as your pipeline map.

4 Now, we have 15 different segments of the entire
5 gathering system owned by different operators, we can piece
6 that together, but it's going to be a much better product if
7 it's reported by a parent company. So that's just my
8 statement up front.

9 COMMISSIONER ENGLER: That's (3) or (4)?

10 CHAIRWOMAN SANDOVAL: I think that's (4).

11 COMMISSIONER ENGLER: Yeah, so (3), (3) is --

12 CHAIRWOMAN SANDOVAL: (3) is the acquisition
13 thing that is similar so we need to add "or sale" in order
14 to mirror 27.9.A(3)(b), so it should have "or sale" at the
15 back end, too.

16 MR. MOANDER: Okay, I think that's good.

17 CHAIRWOMAN SANDOVAL: Now, the second --
18 actually, we missed one of the acquisitions or sales in 27
19 now that we are looking at this. In Part 27, if you want
20 to --

21 COMMISSIONER ENGLER: We could delete that.

22 CHAIRWOMAN SANDOVAL: Yeah, there should be
23 three.

24 COMMISSIONER ENGLER: That's good.

25 CHAIRWOMAN SANDOVAL: Good.

1 COMMISSIONER ENGLER: So then you are going back
2 to your item (4) now?

3 CHAIRWOMAN SANDOVAL: Yes item (4), I think it is
4 critical that operators that are affiliated shall
5 consolidate their natural gas reporting and compliance
6 obligations. I think it's already common practice on the
7 gas reporting. I do not think it is a stretch, and I think
8 the data quality that OCD could receive could be very
9 different depending on this provision. And I know, I think
10 it was Mr. Powell or Mr. Bolander that talked about it in
11 their rebuttal. Mr. Powell talked about it originally.

12 COMMISSIONER KESSLER: Mr. Powell.

13 COMMISSIONER ENGLER: Is there any objection to
14 that?

15 CHAIRWOMAN SANDOVAL: NMOGA thinks it should be
16 may instead of shall. They want the option.

17 COMMISSIONER ENGLER: Let's keep shall.

18 CHAIRWOMAN SANDOVAL: I think shall is very
19 important.

20 COMMISSIONER KESSLER: I agree.

21 CHAIRWOMAN SANDOVAL: I mean, I think there would
22 be extreme data quality issues and it would be very hard to
23 comprehend if we evaluate compliance across the company.

24 COMMISSIONER ENGLER: I think we dispose of may
25 because we'll get some who did and some who didn't.

1 COMMISSIONER KESSLER: Yeah, that's always
2 important.

3 COMMISSIONER ENGLER: This is good.

4 CHAIRWOMAN SANDOVAL: B, and 10.B, accounting,
5 and this provision, similar -- to similar to what OCD did in
6 9.B they have an addition proposed change on this language,
7 again, state similarly really clean the whole section.

8 Yeah, it's the same, but it's just much cleaner
9 than what's there now.

10 COMMISSIONER KESSLER: Is this is a (unclear)
11 change it to, yeah, the 28th.

12 CHAIRWOMAN SANDOVAL: And we need to change the
13 date to February 28 in order to align for all the reasons
14 stated earlier.

15 All right. So we're good. And just to be clear,
16 the accounting changes in the additional changes from OCD, I
17 think, sort of clean up NMOGA's proposal which we did not
18 accept in Part 27, but the changes that OCD made in the
19 additional, it does, I think, clean that up.

20 COMMISSIONER ENGLER: Agreed.

21 CHAIRWOMAN SANDOVAL: So we are not agreeing to
22 NMOGA's changes.

23 MR. MOANDER: And the OCD changes for B(1) and
24 B(1) and B(1) an B(2) are accepted?

25 CHAIRWOMAN SANDOVAL: Yes.

1 COMMISSIONER KESSLER: Yes.

2 COMMISSIONER ENGLER: Yes.

3 CHAIRWOMAN SANDOVAL: All right. So then we go
4 to the ALARM provision, which would match up with the B(3)
5 and (4).

6 HEARING OFFICER ORTH: Madam Chair, this is my
7 second and final interruption here. Sorry. But Chris, just
8 had it up on the screen, the -- yeah, that one. If we could
9 just change that away from passive voice and just say "OCD
10 shall publish a list of approved ALARM technologies on the
11 Division's website." Great.

12 CHAIRWOMAN SANDOVAL: Any way to clean up the
13 language, the language with a fresh eye is much appreciated.

14 HEARING EXAMINER ORTH: Thanks.

15 CHAIRWOMAN SANDOVAL: Lawyers getting (unclear)
16 with a passive voice. Thank you for pointing that out, Ms.
17 Orth.

18 CHAIRWOMAN SANDOVAL: Again, for the same reasons
19 previously, the same change was made in Part 27 and it's
20 important to be consistent for all the same reasons
21 previously described, and the same -- or it's a good change
22 here. It's the same intent, it just cleans up the language.

23 COMMISSIONER ENGLER: So shall be published
24 should be removed; right?

25 MR. MOANDER: Oh, yeah.

1 COMMISSIONER ENGLER: On both.

2 MR. MOANDER: On the Division's website.

3 CHAIRWOMAN SANDOVAL: All right. I just want to
4 note that NMOGA again here proposes to do once in order to
5 sort of meet the bar of ALARM and getting the credit from
6 the Division. Are we -- and that was retained in Number 27,
7 and for all of those reasons should be retained here. And
8 NMOGA's proposal is not accepted.

9 COMMISSIONER KESSLER: I agree.

10 CHAIRWOMAN SANDOVAL: I also note that's the last
11 NMOGA change.

12 COMMISSIONER KESSLER: Yes.

13 CHAIRWOMAN SANDOVAL: Okay. And let's see, in
14 (b), no change I believe was also accepted previously and,
15 yes, that language mimics Part 27 and should be accepted in
16 (b), following field verification.

17 COMMISSIONER ENGLER: You have (3)(b) there.

18 CHAIRWOMAN SANDOVAL: Yeah. It's no longer (3),
19 I think it's (1).

20 COMMISSIONER ENGLER: It is (1).

21 CHAIRWOMAN SANDOVAL: Yeah. And then (d), it was
22 struck, was also struck in Part 27. For all of those same
23 reasons it should be struck here and accepted.

24 COMMISSIONER ENGLER: Agreed again.

25 COMMISSIONER KESSLER: Yes.

1 CHAIRWOMAN SANDOVAL: All right. Move on to C --
2 well, let me make sure. This is third party verification.

3 COMMISSIONER ENGLER: Big C.

4 CHAIRWOMAN SANDOVAL: Big C, capital C. I
5 believe this aligns with Part 27 to the word, and therefore
6 it should be approved.

7 COMMISSIONER KESSLER: This was moved from a
8 different section to add detail on procedure where the
9 operators and the Division don't have agreement, and we
10 outlined the reasons that we support that provision in Part
11 27, so again we support this provision.

12 COMMISSIONER ENGLER: That's correct.

13 CHAIRWOMAN SANDOVAL: Okay. Maybe this was a
14 question -- so what other parts do we have to -- is that
15 Part 7?

16 MR. MOANDER: Yes, I believe that's right. Part
17 7 and Part 18.

18 HEARING EXAMINER ORTH: And 19.

19 CHAIRWOMAN SANDOVAL: Do you have a screen that
20 you could put up?

21 MR. MOANDER: I do not have those. These are the
22 big items -- I guess there are two that were the big
23 important items.

24 HEARING EXAMINER ORTH: If you put back up the
25 application filed by the Division on October 15, which can

1 be found on imaging with Page 4, 21528. If you could put
2 that up.

3 MR. MOANDER: Yes. Those will be in PDF, but
4 they'll do the trick, so give me just a moment.

5 CHAIRWOMAN SANDOVAL: Does Mr. Ames have the word
6 document? It may not matter.

7 MR. MOANDER: I don't believe he --

8 HEARING EXAMINER ORTH: I have his Word, but
9 there was no one who proposed language changes to that.

10 COMMISSIONER ENGLER: There are none.

11 CHAIRWOMAN SANDOVAL: Okay. So the PDF may be
12 adequate.

13 MR. AMES: Madam Chair, I just forwarded the
14 application to Chris and Felicia.

15 MR. MOANDER: I'm going to stop sharing here and
16 stop downloading so I can pull up the other real quick.

17 CHAIRWOMAN SANDOVAL: Shall we take a five-minute
18 break?

19 MR. MOANDER: Yes.

20 (Recess taken.)

21 CHAIRWOMAN SANDOVAL: All right. Do we have
22 the --

23 MR. MOANDER: I believe so. These are going to
24 be in pdf, so they are going to be a little rough looking.

25 COMMISSIONER ENGLER: They will be good.

1 MR. MOANDER: You guys won't mind me marking them
2 all up and maybe scrawling on them?

3 CHAIRWOMAN SANDOVAL: Okay. So mark those
4 changes.

5 MR. MOANDER: Yes. So let's -- which one do we
6 want to start with, because we've got 7, 9, 18 and 19, I
7 believe.

8 CHAIRWOMAN SANDOVAL: I don't know if that makes
9 a ton of difference.

10 MR. MOANDER: Let's just start with 7 then, since
11 it's a small number, the earlier portion, section.

12 COMMISSIONER KESSLER: Was there testimony?

13 CHAIRWOMAN SANDOVAL: I don't know. I don't
14 believe there was any testimony on this other than maybe
15 some data changes were just aligning with the updated rule.

16 So, Mr. Moander, we are going off of your
17 document, so whenever you're ready -- we can't do anything.

18 MR. MOANDER: Sorry. So having looked through
19 this, as far as I can tell, this is almost exclusively
20 renaming, renumbering and then providing citations to other
21 rules, pretty generally. And pardon me, but I am going to
22 scroll down here because I want to double check one item.

23 Okay. Where the citations were added in here,
24 they are not pinpoint cites, so that means, unless we fully
25 change the entire rule or moved it, which didn't happen,

1 that shouldn't be a problem.

2 CHAIRWOMAN SANDOVAL: Okay. So let's hear from
3 Ms. Orth then.

4 COMMISSIONER KESSLER: Do we need to go through
5 this line by line since most of these changes are, as you
6 mentioned, the latest just crafting of small language to
7 update the verbiage?

8 MR. MOANDER: I don't think so, but what I would
9 suggest here, if perhaps the Commissioners take a minute --
10 I mean, this is all of six pages -- maybe take a look at
11 this. I'm going to look at it again, too, to see if there
12 is anything substantive that does catch our eyes.

13 Otherwise, I think that this should be okay, be
14 approved, and then ultimately voted on. It occurs to me, do
15 all the Commissioners have a copy of this available?

16 CHAIRWOMAN SANDOVAL: Yeah, we are working on
17 that right now.

18 MR. MOANDER: Would you like me to e-mail all
19 three?

20 CHAIRWOMAN SANDOVAL: Sure.

21 MR. MOANDER: All right. Everyone close their
22 eyes for a second. There we go. Okay. Look how tidy my
23 desktop is, everybody. All right. Those were just sent to
24 you, Madam Chair.

25 CHAIRWOMAN SANDOVAL: Mr. Moander, why don't we

1 start with 19, and we're going to do one by one.

2 HEARING OFFICER ORTH: Madam Chair, I just wanted
3 to mention here that it was Brandon Powell for the Division
4 who explains the proposed changes in Parts 17, 18 and 19 as
5 part of his direct.

6 CHAIRWOMAN SANDOVAL: Got it. Thank you. So for
7 19.15.19, that proposed change, other than the title the
8 Division on top of Commission which is approved and all the
9 little annotations, I think, should be approved. The main
10 change here is 19.15.10, which basically is now outdated and
11 antiquated and no longer necessary because of the changes
12 that are made in 19.15.27, and therefore the removal is
13 appropriate and should be accepted.

14 COMMISSIONER KESSLER: I agree with that also for
15 the reasons that Mr. Powell stated.

16 COMMISSIONER ENGLER: I agree.

17 CHAIRWOMAN SANDOVAL: Okay, 18. Again, there's a
18 change between agencies from NMSA 19 (unclear) the reasons
19 are not -- those are non-substantive changes. And there are
20 a couple of changes in here to conform formatting, 25
21 percent is out, things like that, those are all
22 non-substantive changes and should be approved.

23 19.15.18.11 and 19.15.18.12 have been made
24 obsolete by 19.15.18 -- I'm sorry -- 19.15.27 and are
25 therefore no longer necessary and should be removed as is

1 proposed by the Division and was represented by Mr. Powell's
2 testimony.

3 COMMISSIONER KESSLER: I agree with what the
4 Director just outlined and support those changes.

5 COMMISSIONER ENGLER: 19.15.18, correct.

6 CHAIRWOMAN SANDOVAL: Okay, 19.15.7, again, no
7 issues with 19.15.7.1, just changing the name, all
8 non-substantive changes. Looks like did update a couple of
9 minor pieces, like in 19.15.7.8.C, they updated the term
10 salt to produced, that seems like it's just cleaning up
11 common language and should be approved.

12 Moving down from that it's just a renumbering,
13 and that will kind of align with the changes that are made.
14 Let's come back to 57 and 58. Okay. Up to the edition of
15 form C-147 and C-148 in 57 and 58, Commissioners, do you
16 have any concerns with the renumbering?

17 COMMISSIONER ENGLER: No, I don't.

18 COMMISSIONER KESSLER: No. I understand and
19 agree with the changes that have been made.

20 CHAIRWOMAN SANDOVAL: All right. Okay,
21 19.15.7.24.B

22 MR. MOANDER: 24.B?

23 CHAIRWOMAN SANDOVAL: It's on Page 3.

24 MR. MOANDER: Okay.

25 CHAIRWOMAN SANDOVAL: This looks like it's just

1 cleaning up the language and making it much clearer, "An
2 operator shall file form C-115 using the Division's
3 application on the 15th day of second month following
4 production." I have no changes with that language. I think
5 it clarifies it, makes it easier to read.

6 COMMISSIONER KESSLER: Agreed.

7 COMMISSIONER ENGLER: Agreed.

8 CHAIRWOMAN SANDOVAL: On 19.15.7.25, this is an
9 edition. This is to align with the new rules (unclear) the
10 form that is required to be filed, which is the C-115B. The
11 operator is required to file in accordance with the new
12 rules, and it looks like that language basically mirrors the
13 C-115 language above, and I support that change.

14 COMMISSIONER KESSLER: Yes, I agree. The entire
15 change is necessary.

16 COMMISSIONER ENGLER: Agreed.

17 CHAIRWOMAN SANDOVAL: 19.15.7.37, this was a
18 previous C-129 form, and the form is still going to be
19 utilized, but again because of the changes in the rule, it
20 is now taking a new format. It is no longer the exception
21 to the no flare rule. It is now going to be used for the
22 reporting of vented or flared natural gas, and so therefore
23 this new language aligns with the updated rule and gets rid
24 of the language that is now outdated.

25 COMMISSIONER ENGLER: Agreed.

1 COMMISSIONER KESSLER: Agreed.

2 CHAIRWOMAN SANDOVAL: Going back up here. It
3 looks like like the Division also made a couple of minor
4 updates to their rules adding in the new C-147 and C-148 in
5 Line 57 and 58 of 19.15.7.18. And so it looks like they
6 just did a little bit of editorial clean-up. I have no
7 problem with that edition while this rule was open and I
8 think should be accepted.

9 COMMISSIONER KESSLER: Agreed.

10 COMMISSIONER ENGLER: Very good, yes.

11 CHAIRWOMAN SANDOVAL: And that concludes the
12 additional changes. They all maintain consistent throughout
13 the rules and make sure nothing is outdated.

14 All right. Specifically the process is here is
15 that, Mr. Moander, you will take all of this information and
16 draft an order and will circulate it to the Commissioners
17 for comment to make sure that there were no, you know, sort
18 of non-substantive issues that popped up here, et cetera.
19 That is the typical process here. Do you have any -- you or
20 Ms. Orth have any guidance for the Commission?

21 MR. MOANDER: For the hearing.

22 CHAIRWOMAN SANDOVAL: For today, for going
23 forward?

24 MR. MOANDER: Okay. So for today we are going to
25 have to put a final vote on the record for the modifications

1 of each of the five parts.

2 CHAIRWOMAN SANDOVAL: I don't believe --

3 MR. MOANDER: So we only voted on one item during
4 the entirety here, a formal vote, and this will just be
5 like, we have gone through and there is an acceptance sort
6 of informally of the changes. There was only one vote
7 concerning the one provision that Dr. Engler had a problem
8 or did not like.

9 So what I need to do is do an official vote that
10 you accept the changes as discussed and deliberated in this
11 hearing for all five parts, and then the order drafting
12 falls on my shoulders. We can discuss when to get the order
13 and the final rule up for the final vote and approval. We
14 don't have to set that at the moment. So that's really all
15 we need to do, and then the rules have been modified. And
16 Felicia, am I mistaken on that, or do you have --

17 HEARING EXAMINER ORTH: Yeah. Actually, some of
18 the -- what I understand of administrative rulemakings is
19 that it's important for the Commission to take a vote.
20 Let's just say, for example, that they would vote to adopt
21 Sections 7, 18 and 19 as proposed by Division, and vote to
22 adopt Sections 27 and 28 as changed, if you will, through
23 discussions that you have had during your deliberations.

24 And I think that comes today, but there is
25 another important part of that which is that you authorize

1 Mr. Moander in his preparation of the final rule to, to form
2 the rule in ways that are non-substantive and that would,
3 for example, you know, authorize him to change numbering,
4 lettering.

5 Also that when the Division goes to file these
6 rules in records in archives, where you see the words
7 effective date, that's probably going to be a date certain
8 because by the time it's filed, you will know what that date
9 is. Again, non-substantive changes, but I would
10 respectfully reference those for Mr. Moander in the Division
11 on the way to getting it published in the register.

12 Then what you are doing at your next meeting or
13 whatever meeting it is adopting the statement of reasons
14 that support what you have adopted, but that's a different
15 meeting because that obviously is going to take some time to
16 prepare.

17 CHAIRWOMAN SANDOVAL: Okay.

18 MR. MOANDER: So with that in mind, would the
19 Commission like to proceed to voting on, voting on the rules
20 as deliberated and amended?

21 COMMISSIONER KESSLER: Yes. I would propose,
22 first I would make a motion to adopt the three rules that we
23 just discussed which were 19.15.7 -- gosh.

24 MR. MOANDER: 18 and 19.

25 COMMISSIONER KESSLER: 18 and 19, yeah. Thank

1 you for that, Mr. Moander.

2 CHAIRWOMAN SANDOVAL: Is there a second.

3 COMMISSIONER ENGLER: I second.

4 CHAIRWOMAN SANDOVAL: Mr. Moander, would you do a
5 roll call vote.

6 MR. MOANDER: Commissioner Kessler?

7 COMMISSIONER KESSLER: Approve.

8 MR. MOANDER: Commissioner Engler?

9 COMMISSIONER ENGLER: Approve.

10 MR. MOANDER: And Madam Chair?

11 CHAIRWOMAN SANDOVAL: Approve.

12 MR. MOANDER: Excellent.

13 COMMISSIONER KESSLER: Secondly, I would move to
14 adopt the two rules that have been discussed and deliberated
15 on the past two days. That would be 19.15.27 and 19.15.28
16 as deliberated on, significantly amended, and as fashioned
17 by Mr. Moander.

18 CHAIRWOMAN SANDOVAL: Is there a second?

19 COMMISSIONER ENGLER: I second.

20 CHAIRWOMAN SANDOVAL: Mr. Moander, would you
21 please do a roll call vote.

22 MR. MOANDER: Yes, Madam Chair. Commissioner
23 Kessler?

24 COMMISSIONER KESSLER: Approved.

25 MR. MOANDER: Commissioner Engler?

1 COMMISSIONER ENGLER: Approved.

2 MR. MOANDER: And Madam Chair?

3 CHAIRWOMAN SANDOVAL: Approved.

4 COMMISSIONER KESSLER: I would make an additional
5 motion to allow Mr. Moander to make changes to the rule that
6 are non-substantive in order to conform numbering, in order
7 to assign the effective date necessary as and to, to put
8 together other errors that may arise as he is preparing a
9 final draft.

10 CHAIRWOMAN SANDOVAL: Is there a second.

11 COMMISSIONER ENGLER: I second.

12 CHAIRWOMAN SANDOVAL: Mr. Moander, would you
13 please do a roll call vote?

14 MR. MOANDER: Yes, Madam Chair. Commissioner
15 Kessler?

16 COMMISSIONER KESSLER: Approved.

17 MR. MOANDER: Commissioner Engler?

18 COMMISSIONER ENGLER: Approved.

19 MR. MOANDER: And Madam Chair.

20 CHAIRWOMAN SANDOVAL: Approved. All the motions
21 passed unanimously.

22 MR. MOANDER: Congratulations.

23 CHAIRWOMAN SANDOVAL: Oh, god.

24 MR. MOANDER: Congratulations.

25 COMMISSIONER ENGLER: Thank you.

1 CHAIRWOMAN SANDOVAL: Okay. I hate to ask this,
2 but I think we need to set a date to discuss the final
3 order. Our next scheduled hearing is in -- well, it's on
4 the 25th, our next following is the 25th of March.

5 Mr. Moander, does that seem like a reasonable
6 date to get everything prepared and circulate to the
7 Commissioners.

8 MR. MOANDER: That, I think it's doable. If I
9 run into an obstacle I will be in contact with you. But my
10 goal would be to get it circulated seven days before the
11 meeting so everyone can do a deep dive. I think that's
12 achievable.

13 CHAIRWOMAN SANDOVAL: Okay, you know, and given
14 you think it's possible, understanding (unclear) but I do
15 want to be able to provide the public with certainty as to
16 when this final order may be voted on. And so we will
17 direct Commission Clerk Florene Davidson to put this on the
18 agenda for March 25.

19 MR. MOANDER: Excellent.

20 CHAIRWOMAN SANDOVAL: All right. Well, thank
21 you, everyone. It's been a --

22 COMMISSIONER KESSLER: It's been real.

23 CHAIRWOMAN SANDOVAL: It's been real.

24 MR. MOANDER: Thank you all. I appreciate
25 everybody's effort, especially the parties. It doesn't get

1 done without you.

2 COMMISSIONER ENGLER: Meeting adjourned?

3 CHAIRWOMAN SANDOVAL: Yes. And with that,
4 everyone, it's 5:08 on the 12th and the meeting is
5 adjourned.

6 (Concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of extremely poor to good quality.

17 Dated this 12th day of February 2021.

18

/s/ Irene Delgado

19

Irene Delgado, NMCCR 253
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