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SPECIAL MEETING
MOTION HEARING
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

June 10, 2021

9:00 a.m.

Volume 2

APPEARANCES:

Felicia Orth: Madam Hearing Officer

Andrienne Sandoval: Chairwoman

Gregory Bloom: Commissioner

Terry Warnell: Commissioner

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1 MADAM HEARING OFFICER ORTH: Good morning
2 everyone. We are back on the record in Case
3 Number 21834. These were proposed amendments to the
4 Commission's rules on releases, 19.15.29.6, 29.8 and
5 29.15.

6 We completed the live evidentiary record
7 portion of the hearing yesterday and written public
8 comment was due by 5:00 p.m. last night. We had
9 just the written public comment that was referred to
10 yesterday during the hearing from Ralph Wrons and
11 Intrepid Potash.

12 At the end of the record yesterday I had
13 asked counsel to say whether they choose to make any
14 rebuttal, at least on evidence that had come in
15 during the hearing, the answer was no from all
16 parties.

17 Let me pause for a moment in the event
18 there is anyone who believes based on the written
19 public comment that they would like to put on
20 rebuttal.

21 I hear nothing, and we did do a sound
22 check this morning with all counsel, so I know all
23 counsel are on the platform.

24 CHAIRWOMAN SANDOVAL: Ms. Orth, it looks
25 like Mr. Aims was trying to say something.

1 MADAM HEARING OFFICER ORTH: Mr. Ames?

2 MR. AMES: Good morning, Ms. Orth. I just
3 want to clarify. The comments that were received
4 are not testimony. They have not been admitted into
5 evidence, and I think there would be some hazard for
6 the Commission to rely upon those comments in making
7 its decision.

8 So with that, we do not intend to present
9 any testimony regarding those comments. All the
10 parties have rested. The parties have presented
11 witnesses and rested. The others did not, and
12 statements of counsel regarding comments would not
13 be probative in any event, so that is all I need to
14 say.

15 Thank you.

16 MADAM HEARING OFFICER ORTH: All right.
17 So we might have a discussion about how the
18 Commission can weigh written public comments.
19 Again, they are not taken under oath or subject to
20 cross-examination.

21 They are part of the larger record, I
22 think, the Commission considers in their
23 decision-making, but I will leave that in the event
24 they had questions, how about that? I will leave
25 that to Mr. Moander. I was just following a line of

1 inquiry that was just suggested.

2 So, Madam Chair, there really isn't any
3 other evidence to come in. The record is closed.
4 Public comment is closed. And if you would like to
5 begin your deliberations this morning, I think you
6 have everything you need.

7 CHAIRWOMAN SANDOVAL: Thank you, Ms. Orth.
8 All right. Commissioners, I think it is likely and
9 easiest to work off of OCD Exhibit 6.

10 Does everybody have OCD Exhibit 6?

11 MR. MOANDER: Madam Chair, just so you
12 know, if you want to do what we did last time in the
13 venting and flaring hearing, I do have a draft up on
14 my screen that could be put up for everyone to look
15 at. I don't know how you like to do that because
16 this is a much lighter document than the last couple
17 we worked on. I think it's pretty straightforward,
18 so I will leave that up to you, but that option is,
19 of course, on the table.

20 CHAIRWOMAN SANDOVAL: That might be
21 helpful just to make sure we are all looking at the
22 same thing at the same time.

23 MR. MOANDER: I will just state the
24 obvious, but to be clear, when things are completed
25 I will remove the draft watermark.

1 CHAIRWOMAN SANDOVAL: It is sort of hard
2 to see on there, but Commissioners, unless you have
3 any other preference, I think we just sort of roll
4 down it and have discussion.

5 So 19.15.29.6, the proposal by OCD, WEG
6 and agreed upon by IPANM and NMOGA was to add in the
7 objectives, that the objective was to prohibit
8 releases and require persons and the change there is
9 adding, "prohibit releases," which makes spilling
10 prohibited.

11 There was testimony from Mr. Griswold on,
12 I think, why that change was made and the potential
13 benefits of that change. I am agreeable with it.

14 Commissioner Bloom and Commissioner
15 Warnell, do you have any comments and do you agree
16 on that change?

17 COMMISSIONER BLOOM: Madam Chair, I do
18 agree with these changes, particularly based on the
19 testimony provided by Mr. Griswold of the OCD,
20 specifically when he spoke to the number of
21 releases, spills that happened between 2010 and
22 2020, more than 12,000 were identified, according to
23 his testimony because including about 7,000 releases
24 of produced water and 4,000 releases of crude oil.

25 I pointed out that, "During 2020 alone,

1 operators reported more than 700 releases involving
2 produced water, of which 330 were major, defined as
3 25 barrels or more; 398 releases involving crude
4 oil, of which 90 were major."

5 So seeing that and having heard no
6 objections from anybody among the parties involved
7 here nor in public comment, I believe that these are
8 solid changes and I am supportive of the changes and
9 language here.

10 CHAIRWOMAN SANDOVAL: Just to be clear, I
11 think the only opposition we heard in general was
12 from written comment from Intrepid Potash, but
13 otherwise everybody, all the parties were
14 supportive.

15 Commissioner Warnell?

16 COMMISSIONER WARNELL: Good morning, Madam
17 Chair. I also heard some very positive support from
18 all of the parties yesterday with the exception of
19 Intrepid, so I think we can go forward.

20 CHAIRWOMAN SANDOVAL: Thank you. Okay.

21 That change adding the, "prohibit
22 releases," is approved. It looks like also in
23 19.15.29.6 there was a minor modification just sort
24 of in formatting. "Procedures" was moved up, so
25 that it states, "And to establish procedures for

1 reporting site assessment remediation, closure,
2 variance and enforcement."

3 I think based on Mr. Griswold's testimony
4 and this being, I think, in general a relatively
5 minor change just cleaning up some of the language,
6 I am good with moving that word and making the
7 change.

8 MR. MOANDER: So, Madam Chair, I want to
9 just interject here with an idea. Because we are
10 going down to the subsection here, essentially, why
11 don't we go through and do the changes because they
12 are fairly minimal and then I am going to have -- I
13 propose the Commission do a quick vote.

14 So basically there will be a vote on 6, 8,
15 15, and I think that is it. So you are going to do
16 them kind of a lump sum.

17 So what I recommend is there be a motion
18 to just vote on 29.6 and the changes that have been
19 discussed and found favorable to date and we can
20 just vote on it that way or you can vote on it that
21 way.

22 CHAIRWOMAN SANDOVAL: Before we vote I
23 just want to make sure if Commissioner Bloom or
24 Warnell have any comments on moving "Procedures" and
25 changing up that piece of 6.

1 COMMISSIONER BLOOM: Madam Chair, I do
2 not. It makes sense to move the word "procedures"
3 as discussed by Mr. Griswold in his testimony.

4 Thank you.

5 COMMISSIONER WARNELL: Commissioner
6 Warnell is okay with it.

7 CHAIRWOMAN SANDOVAL: Thank you.

8 Mr. Moander, do you want to do a roll call
9 vote for approval of the changes to 19.15.29 -- I'm
10 sorry.

11 First, is there a motion to adopt the
12 changes as proposed in 19.15.29.6?

13 COMMISSIONER BLOOM: Madam Chair, I move
14 to approve the changes as identified in 19.15.29.6.

15 MADAM HEARING OFFICER ORTH: Is there a
16 second?

17 COMMISSIONER WARNELL: I second that
18 motion.

19 CHAIRWOMAN SANDOVAL: All right.

20 Now, Mr. Moander, would you please do a
21 role call vote for us.

22 MR. MOANDER: Yes, Madam Chair.

23 Commissioner Warnell?

24 COMMISSIONER WARNELL: Yes, I vote yes.

25 MR. MOANDER: Commissioner Bloom?

1 COMMISSIONER BLOOM: Yes.

2 MR. MOANDER: Madam Chair?

3 CHAIRWOMAN SANDOVAL: Yes.

4 MR. MOANDER: The motion passes.

5 (Unanimous vote, motion passes.)

6 CHAIRWOMAN SANDOVAL: There is one change
7 in the next section, 19.15.29.8. There is the
8 addition of a Section A. In Section A it adds -- it
9 continues with the prohibition that was just
10 approved upon in the objectives and states there is
11 a prohibition for major releases and minor releases.
12 And as was proposed in an addition by the Division
13 after the original proposal an exception for
14 Parts 27 and 28.

15 For the record, Parts 27 and 28 are the
16 national gas waste rules for production operations
17 and for natural gas midstream operations that were
18 just approved by and voted on by the Commission and
19 went into effect in May.

20 And those rules piggyback off of Part 29
21 for some of the release reporting. Releases in
22 those rules being referred to or being natural
23 gas-type releases, but Part 29 covers natural gas
24 releases as well as releases of liquids.

25 So in 27 and 28, but there are required

1 reporting pieces and there was extensive testimony
2 during those hearings aligning Parts 27 and 28 with
3 Part 29 so that operators aren't having to report
4 two different -- I'm sorry, so that operators aren't
5 having to report one release two different times on
6 two different forms, so there was an alignment of
7 Part 27 and 28 with Part 29.

8 And so because of that and because of, I
9 think, the extensive testimony that was done at
10 those hearings, you know, I think that this addition
11 by the OCD makes sense. If not, it really would
12 change sort of the broader intent and discussions
13 and testimony that was heard in Parts 27 and 28 and
14 that went through extensive processes, so I am good
15 with the addition, one, of A in general as well as
16 the addition of the exception in Parts 27 and 28 in
17 order to not undermine the regulations that were
18 just passed by the Commission a couple of months
19 ago.

20 Commissioners Bloom or Warnell, do you
21 have any discussion on that point?

22 COMMISSIONER BLOOM: Madam Chair, I agree
23 that these are warranted changes to the rule. As
24 you noted and as Mr. Griswold noted in his
25 testimony, the Parts 27 and 28 were just recently

1 changed this year and made to come into alignment
2 with Part 29. So this is important language to have
3 in this update to this rule.

4 Thank you.

5 COMMISSIONER WARNELL: Madam Chair,
6 Commissioner Warnell, I agree with the addition of
7 Paragraph A.

8 CHAIRWOMAN SANDOVAL: Thank you.

9 The only other changes on here just
10 correspond with adding A. A is now B, B is now C,
11 and there were no other changes proposed in that
12 section.

13 So with that, I will ask if there is a
14 motion to adopt the changes that were in OCD
15 Exhibit 6 in 19.15.29.8.

16 COMMISSIONER BLOOM: Madam Chair, I move
17 to adopt the changes to 19.15.29.8.

18 CHAIRWOMAN SANDOVAL: Is there a second?

19 COMMISSIONER WARNELL: Madam Chair, I
20 second that motion.

21 CHAIRWOMAN SANDOVAL: Mr. Moander, would
22 you do a roll call vote, please.

23 MR. MOANDER: Yes, Madam Chair.
24 Commissioner Bloom?

25 COMMISSIONER BLOOM: Yes.

1 MR. MOANDER: Commissioner Warnell?

2 COMMISSIONER WARNELL: Yes.

3 MR. MOANDER: Madam Chair?

4 CHAIRWOMAN SANDOVAL: Yes.

5 MR. MOANDER: The motion passes
6 unanimously.

7 (Unanimous vote, motion passes.)

8 CHAIRWOMAN SANDOVAL: Thank you.

9 Last but certainly not least are the
10 changes to 19.15.29.15. There are a handful of
11 changes here predominantly focused on aligning this
12 rule with the penalties rule that OCD deems the
13 authority for during the 2019 legislative session
14 and then passed an associated rule at the beginning
15 of 2020.

16 And there were some changes that were
17 testified by from Mr. Griswold explaining why they
18 were being -- primarily these are alignment changes
19 and just a little bit of formatting.

20 In lieu of an agreed compliance order in
21 15B, the rule refers to stipulated final orders, so
22 aligning that language with the penalties rule.

23 The same thing in C, making sure that
24 language is aligned and then striking D, again, in
25 order to align everything with the new authority

1 that OCD gained starting in January of 2020.

2 So this would make sure that our rules are
3 aligned with one another, which I think is
4 important, particularly in this section which, you
5 know, I think is -- this section takes on some new
6 meaning now that spills are prohibited. So it is an
7 important section to align with our other rules and
8 authority.

9 Commissioner Bloom and Commissioner
10 Warnell, do you have any discussion on the changes
11 in 19.15.29.15?

12 COMMISSIONER BLOOM: Madam Chair, thank
13 you. I also stand in support of these changes to
14 Section 15. I agree it is important to align this
15 rule with OCD's penalty rule, which changed
16 recently. I realize just about updating our rules
17 and making sure that they are in close alignment. I
18 believe I asked Mr. Griswold a question about this
19 language and it certainly satisfied my question, I
20 should say, so I would stand in support.

21 Thank you.

22 COMMISSIONER WARNELL: Madam Chair,
23 Commissioner Warnell here, I also support the
24 changes to 19.15.29.15.

25 CHAIRWOMAN SANDOVAL: I guess just to be

1 thorough here, there was some discussion by public
2 commenters as well as, I believe, the Intervenor in
3 19.15.29.15(a) that the terminology should be that
4 the Division "shall" take enforcement actions as
5 opposed to Division "may" take enforcement actions.

6 So just to be thorough I think it is good
7 to bring that up in the discussion. In multiple
8 rulemakings, including the waste rulemaking that the
9 Division just underwent, I think there has been a
10 lot of discussion about the importance of
11 maintaining the Division's enforcement discretion.
12 Each individual case is unique and it is important
13 to, you know, allow the Division to manage
14 enforcement as they see fit.

15 And so I think that there is support to
16 maintain the original proposal that says the
17 Division "may" take enforcement action. This was
18 the language that is agreed upon by OCD and WEG in
19 their original proposal. It was agreed upon by two
20 of the other parties NMOGA and IPANM, and so I think
21 that that language should continue to say "may" as
22 opposed to "shall."

23 Commissioners, do you have any comments on
24 that additional piece in 15A?

25 MR. MOANDER: Madam Chair, if I may

1 interject here. I believe this was also the
2 section, I don't have the Intervenor's rule in front
3 of me. I believe this was the section also where
4 there was a proposal for a rebuttable presumption
5 concerning the spills. I believe that is right and
6 if that is the case, perhaps maybe touch on that as
7 well.

8 MADAM HEARING OFFICER ORTH: Mr. Moander,
9 ultimately Intervenor's withdrew that particular
10 proposal.

11 MR. MOANDER: That is right, they did.
12 You are right so we don't need to touch on that.

13 CHAIRWOMAN SANDOVAL: That was handled in
14 the -- just for the record, that was handled in the
15 motions hearing on the 4th and was subject to an
16 order that was put out.

17 COMMISSIONER BLOOM: Yes, I would just add
18 that because of the -- this is also the motion
19 hearing and the fact that changes to this were not
20 on the table yesterday, I don't really feel that we
21 can discuss this at this time, so thank you.

22 CHAIRWOMAN SANDOVAL: I was going to ask
23 if you had any additional comments or discussion on
24 that section in A.

25 COMMISSIONER WARNELL: Commissioner

1 Warnell has no additional comments, so I agree.

2 Thank you.

3 CHAIRWOMAN SANDOVAL: Thank you, okay.

4 With that is there a motion to adopt the changes as
5 is proposed in OCD Exhibit 6 to 19.15.29.15?

6 COMMISSIONER BLOOM: Madam Chair, I move
7 to adopt the proposed changes to 19.15.29.15 as seen
8 in Exhibit 6.

9 Thank you.

10 CHAIRWOMAN SANDOVAL: Is there a second?

11 COMMISSIONER WARNELL: Madam Chair, I
12 second that motion for 29.15.

13 CHAIRWOMAN SANDOVAL: Mr. Moander, would
14 you do a roll call vote, please.

15 MR. MOANDER: Yes, Madam Chair.

16 Commissioner Warnell?

17 COMMISSIONER WARNELL: Yes.

18 MR. MOANDER: Commissioner Bloom?

19 COMMISSIONER BLOOM: Yes.

20 MR. MOANDER: Madam Chair?

21 CHAIRWOMAN SANDOVAL: Yes.

22 MR. MOANDER: Motion passes unanimously.

23 (Unanimous vote, motion passes.)

24 CHAIRWOMAN SANDOVAL: Okay. Well, that
25 wraps up the changes. I think we need to discuss,

1 okay, so our next scheduled meeting is on July 8.

2 I believe that these changes are
3 relatively straightforward and could be voted on for
4 a final order at that hearing.

5 Mr. Moander, is there a proposed -- or
6 Ms. Orth, is there a proposed procedure as to how to
7 get to that date and to vote on that final order?

8 MR. MOANDER: Well, Madam Chair, I was
9 planning on doing exactly what we did with the
10 venting rule, which is I want to get my hands on the
11 transcript from yesterday. I want to prepare a
12 thorough order and then get the final versions of
13 the rule ready to go.

14 Let's see how far out is July 8?

15 CHAIRWOMAN SANDOVAL: It is like four
16 weeks.

17 MR. MOANDER: Yeah, I guess it is around
18 that. So I don't have a problem being prepared for
19 that, but what I would tell the Commissioners, I
20 will be out of the office on the 6th and the 7th, so
21 I will have that sent out to everybody the week
22 before. We will all discuss it with the parties, we
23 will have the order, final rule, everything that
24 needs to accompany that ready to do and disseminated
25 to the parties the week beforehand.

1 CHAIRWOMAN SANDOVAL: Okay.

2 MR. MOANDER: I think at that point
3 because we will have it noticed, the parties will
4 have it, I will work with them on the order to make
5 sure everything is where everyone wants it to be and
6 needs to be and it really should be fairly
7 straightforward and not all that time consuming.

8 CHAIRWOMAN SANDOVAL: Okay. This will be
9 added to the docket for the July 8 hearing to vote
10 on the final order in 19.15.29 changes that were
11 proposed here today.

12 Are there any other pieces that we need to
13 handle on the rule changes before we move on to the
14 other?

15 MR. MOANDER: I don't believe so, Madam
16 Chair, but as always, I'm open to any other input.

17 CHAIRWOMAN SANDOVAL: Ms. Orth?

18 MADAM HEARING OFFICER ORTH: Right. I
19 think when you adopt the statement of reasons just
20 make sure you remember to authorize the Division to
21 make whatever changes they need in order to file the
22 rules, but I think that is a task for July 8.

23 CHAIRWOMAN SANDOVAL: Okay. You mean
24 adopt them just if there were any formatting
25 changes, et cetera, as necessary by the record

1 center?

2 MADAM HEARING OFFICER ORTH: That is what
3 I mean.

4 CHAIRWOMAN SANDOVAL: Makes sense.

5 All right. Well, before we move on to
6 pending litigation, which is Item Number 5, I just
7 want to thank the parties, thank you for your
8 collaboration and coordination. I think you have
9 made this a relatively smooth process and, you know,
10 a very well executed, so thank you-all for your, I
11 think, collaboration upfront.

12 And this is, you know, this is an
13 important item for the Commission to have taken into
14 consideration, so thank you.

15 MR. MOANDER: I would also like to thank
16 the parties for their work on this. I am finding
17 the level of professionalism and focus coming out of
18 counsel to be excellent and extremely helpful and I
19 think this hearing reflects a lot of that in terms
20 of how it operated. So that is a thank you from me
21 personally.

22 COMMISSIONER BLOOM: I will echo what our
23 Chairwoman and Mr. Moander said. Thank you all very
24 much, I really appreciate it.

25 CHAIRWOMAN SANDOVAL: All right. With

1 that, Mr. Moander, would you give us an update on
2 pending litigation.

3 MR. MOANDER: As of right now there isn't
4 anything to report about any particular case. I am
5 going to knock on my desk made of wood. It is a
6 nice situation to be in, but, yeah, right now there
7 is nothing to report.

8 CHAIRWOMAN SANDOVAL: All right. Is there
9 any other business before the Commission today?

10 All right. Our next regularly scheduled
11 meeting is on July 8 at 9 a.m., and with that, I
12 will thank everybody for your time the last couple
13 of days, and I wish you an almost happy weekend.

14 All right. Thank you everybody. Have a
15 good morning.

16 (Proceedings concluded at 9:34 a.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: June 10, 2021

/s/ PAUL BACA

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