

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL AND GAS  
ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF  
TITLE 19, CHAPTER 15 OF THE NEW MEXICO  
ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP  
SYSTEMS, BELOW-GRADE TANKS AND SUMPS AND OTHER  
ALTERNATIVE METHODS RELATED TO THE FOREGOING  
MATTERS, STATE-WIDE.

CASE NOS. 14784 AND 14785

TRANSCRIPT OF PROCEEDINGS  
COMMISSION DELIBERATIONS  
January 11, 2013  
Santa Fe, New Mexico

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THE COMMISSION:  
JAMI BAILEY, Chairperson  
  
GREG BLOOM, Commissioner  
DR. ROBERT BALCH, Commissioner  
MARK A. SMITH, Esq.  
  
FLORENE DAVIDSON, Commission Clerk  
THERESA DURAN-SANCHEZ

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1                   CHAIRPERSON BAILEY: This is the  
2 continuation of the Oil Conservation Commission  
3 meeting. Today is Friday, January 11th, 2013. We  
4 are in Porter Hall, in Santa Fe, New Mexico.

5                   Commissioner Greg Bloom, who is the  
6 designee of the Commissioner for public lands, is  
7 present.

8                   Commissioner Robert Balch, who's the  
9 designee of the Secretary of Energy, Minerals, and  
10 Natural Resources Department, is present.

11                  And I'm Jami Bailey, director of the Oil  
12 Conservation Commission.

13                  So there is a quorum of all the  
14 commissioners, and we will take up where we left off  
15 yesterday evening deliberating amendments to OCD  
16 Rule 17.

17                  COMMISSIONER BLOOM: Madam Chair?

18                  CHAIRPERSON BAILEY: Yes.

19                  COMMISSIONER BLOOM: I spent a little bit  
20 of time last night looking for references to  
21 cathodic well lithology in the transcripts of the  
22 hearing and deliberation, and found where it came up  
23 significantly about three times, and probably I  
24 think most importantly for us here today, Volume 12.  
25 We deliberated and talked about this. I had some

1 questions for you and Dr. Balch.

2 It's pages 2588 and 2597. And reading  
3 that over, I feel comfortable that the new methods  
4 for looking for groundwater -- depth to groundwater  
5 would be -- it would seem to me to be a good change  
6 to make.

7 CHAIRPERSON BAILEY: Oh, okay.

8 COMMISSIONER BALCH: So I'm reading a  
9 portion of that transcript briefly so we are on the  
10 same page.

11 CHAIRPERSON BAILEY: Yes. We come across  
12 that reference for the first time on page...

13 COMMISSIONER BALCH: All right. We are  
14 talking about maps.

15 COMMISSIONER BLOOM: And generally, our  
16 discussion was that there are a lot of blank spaces  
17 on the depth to groundwater map. And the ability to  
18 use some modeling, cathodic well lithology, and the  
19 other measures mentioned there it would seem to help  
20 fill in the gaps a little bit and give us a little  
21 bit more to work on. Of course it is all subject to  
22 OCD review anyhow. So...

23 CHAIRPERSON BAILEY: Theresa, did you fix  
24 the footnote for today?

25 MS. DURAN-SAENZ: Yes, ma'am, I did.

1 CHAIRPERSON BAILEY: Okay.

2 COMMISSIONER BALCH: I didn't see  
3 anything. I mean, I think we were mostly in  
4 agreement yesterday anyway; you just wanted to  
5 review your notes. So the option of data is good.

6 While we are reviewing homework, maybe I  
7 can briefly summarize what I have dug up on the  
8 on-site discussion.

9 CHAIRPERSON BAILEY: Sure.

10 COMMISSIONER BALCH: We've talked about it  
11 virtually every day during testimony because it  
12 comes up in a lot of places. And most of those  
13 instances we would tend to put that off until we got  
14 to the closure discussion because we were -- when we  
15 first started talking about it in the definitions,  
16 there was actually a pretty good definition, I  
17 thought, that you, Chairman, brought up from one of  
18 the public comments. And that's on 2486 of the  
19 Volume 12 transcript. And it is from R360. It's a  
20 public comment.

21 CHAIRPERSON BAILEY: I remember that now.

22 COMMISSIONER BALCH: Yes. And under  
23 public comment on May 2, page 7 on the transcript,  
24 R360 suggests -- these are your words -- "keeping  
25 the word 'on-site' throughout 19.15.17.11, and

1 defining it in 19.15.17.7 to mean within the  
2 boundaries of the lease and/or development plan  
3 wherein exploration or production waste continues to  
4 be under control and management of the operator of  
5 the site."

6 CHAIRPERSON BAILEY: It still makes sense  
7 to me.

8 COMMISSIONER BALCH: It still does make  
9 sense to me. However, we went for another 45  
10 minutes or an hour or so discussing it, and then not  
11 making a definition, passing it up until later, as  
12 it were.

13 And in a lot of places we -- we ended up  
14 putting in a specific language, particularly in  
15 deciding criteria to make sure it was addressed,  
16 irregardless.

17 The -- a lot of the debate that we had was  
18 really about the physical ability to end the  
19 relationship of pits to pads in well sites, and  
20 what's defined in a well site and where the pit  
21 would probably be.

22 The discussion we had had a -- usually  
23 just off the pad. And in most cases -- and in fact  
24 in direct testimony of -- maybe under the  
25 cross-examination of Mike Hasely, it would be

1 impractical, really, to have more than a couple of  
2 wells off of one pit no matter what.

3 CHAIRPERSON BAILEY: In a related way we  
4 discussed where -- this same issue on page 23 of our  
5 draft under "Closure and Reclamation Requirements."

6 Page 23, 13 C, the introductory  
7 sentence -- or introductory paragraph, where it  
8 says: "A nearby temporary pit or burial trench that  
9 receives waste from another temporary pit must be  
10 within the boundaries of the lease and/or  
11 development plan wherein exploration or development  
12 waste continues to be under the control and  
13 management."

14 COMMISSIONER BALCH: Now, this is one of  
15 the examples of -- this is the result of long  
16 deliberation by us --

17 CHAIRPERSON BAILEY: Yes.

18 COMMISSIONER BALCH: -- and putting it  
19 specifically here -- and we put it specifically in a  
20 couple of other places as well -- as opposed to  
21 having a particular definition. And the trend  
22 really was to put off the final discussion of a  
23 definition until we talked about closure, which  
24 would be the last place it came up.

25 So that's -- that's basically where we

1 ended up. I think that the R360 definition that we  
2 decided on is a good place to start.

3 CHAIRPERSON BAILEY: Would you read the  
4 R360 definition for on-site, again?

5 COMMISSIONER BALCH: Sure. R360, in the  
6 public comment dated May 2, 2012, suggests "keeping  
7 the word 'on-site' throughout 19.15.17.11 NMAC and  
8 defining it in 19.15.17.7 NMAC to mean within the  
9 boundaries and the lease and/or development plan  
10 wherein exploration and production waste continues  
11 to be under the control and management of the  
12 operator/producer."

13 CHAIRPERSON BAILEY: So that does not  
14 require a well site, it just requires a lease.

15 COMMISSIONER BALCH: It just requires it  
16 be under the control of the person or the company  
17 that originates the lease.

18 COMMISSIONER BLOOM: Well, I could  
19 certainly narrow it, that some of these leases could  
20 be pretty substantial. Some of the other ones...

21 COMMISSIONER BALCH: You brought that up  
22 before, yeah. They can be very large.

23 CHAIRPERSON BAILEY: So I still think we  
24 should tuck that in the back of our mind until we --

25 COMMISSIONER BALCH: We may as well tackle

1 it after we have done everything else and decide if  
2 we really need a definition. Because we have a  
3 variety of places directly where it addresses the  
4 issue.

5 The only place we really have kind of  
6 delayed it is with the temporary pits, and that's  
7 necessarily not implying closure.

8 CHAIRPERSON BAILEY: Okay. I was looking  
9 back through the work that we did yesterday, or the  
10 document that came out of yesterday's work, and  
11 found a few more errors that we needed to discuss  
12 before we got into the meat of other things..

13 On page 13, which would be 17.11 G (5),  
14 the paragraph begins: "The operator shall minimize  
15 liner seams."

16 As you brought up yesterday, Mr. Bloom, we  
17 had talked about the language for orienting seams  
18 parallel to the line and across the slope to orient  
19 the liner seams, and oriented them up and down and  
20 not across the slope. And that language does appear  
21 in many different places.

22 But at the bottom of this paragraph (5) we  
23 had not yet gotten to changing this language to  
24 reflect that standard language.

25 So for the sentence that begins: "Prior

1 to field seaming, the operator shall overlap liners  
2 four to six inches and orient seams," and I suggest  
3 we scratch the next few words all the way to -- all  
4 the way through "oriented along," and have the same  
5 language "up and down, not across the slope," about  
6 the third line from the bottom.

7 MS. DURAN-SAENZ: If I could have you  
8 repeat that one more time.

9 CHAIRPERSON BAILEY: Okay. One more line  
10 up from your cursor. And it says "seams" -- the  
11 next line down from your cursor. "Seams parallel to  
12 the line of maximum slope," that is fine.

13 Then we scratch -- no, I'm sorry. You  
14 were right. Scratch "parallel to the line of  
15 maximum slope, i.e., oriented along." Delete that  
16 and insert "up and down, not across the slope,"  
17 which reflects the same language as in the first  
18 sentence of that paragraph and in other locations  
19 also.

20 COMMISSIONER BALCH: I recall having some  
21 discussion about this section before. I'm wondering  
22 if we changed it in the multi-well case or -- or if  
23 we merged them together, because I can't remember.  
24 This is for --

25 CHAIRPERSON BAILEY: Permanent pits.

1 COMMISSIONER BALCH: -- permanent pits.  
2 But for almost every other instance we had  
3 multi-well pits following permanent pits, right?

4 CHAIRPERSON BAILEY: Yes, we do.

5 COMMISSIONER BALCH: I remember talking --  
6 I remember having a concern about how specific the  
7 construction and definitions were. And we may have  
8 got to a point where Mr. Smith said we couldn't  
9 really change it because we didn't talk about it.

10 CHAIRPERSON BAILEY: That's right. That  
11 we can't fix problems that we see unless there has  
12 been discussion.

13 COMMISSIONER BALCH: Right. Did we do the  
14 same language for multi-well?

15 CHAIRPERSON BAILEY: That is on page 16,  
16 (7) -- no, J.

17 COMMISSIONER BALCH: It's (6), it looks  
18 like, on page 17.

19 CHAIRPERSON BAILEY: Yes. J (6), on  
20 page 17. And we use that same standard language  
21 there.

22 COMMISSIONER BALCH: Well, except that we  
23 didn't go into all the specific detail, right?

24 CHAIRPERSON BAILEY: Because we could,  
25 because multi-well permanent pits were discussed.

1 COMMISSIONER BALCH: Were discussed.

2 CHAIRPERSON BAILEY: While we are in this  
3 area on page 16, Number (6), up at the very top.

4 MR. SMITH: Well, let me remind you, given  
5 the discussion you-all just had, not to be -- well,  
6 it isn't simply a matter whether they have been  
7 discussed, it's a matter of whether you believe  
8 there is substantial evidence in the record to  
9 justify a change and substantial -- let me see. I'm  
10 kind of shooting from the hip.

11 Substantial, as I recall, is that in view  
12 of everything in the record a reasonable person  
13 would believe that there is -- I believe it's  
14 something like more evidence than not to support  
15 your change.

16 COMMISSIONER BALCH: Well, at the risk  
17 of -- I mean, I know we've probably had this  
18 discussion already before. But we found that for  
19 multi-well fluid pits that a truncated description  
20 which would allow best practices was better than the  
21 language that existed for permanent pits. And there  
22 was an awful lot of discussion about allowing best  
23 practices. That was our justification for making  
24 that change there.

25 MR. SMITH: Well -- and I'm sorry, I've

1 forgotten this. A lot of discussion and  
2 deliberation or a lot of discussion?

3 CHAIRPERSON BAILEY: Deliberation.

4 COMMISSIONER BALCH: We deliberated pretty  
5 extensively throughout this section, I think, when  
6 we were making definitions. Because we did take a  
7 3-inch paragraph from (5), copied it over to the  
8 multi-well section, and then turned it into  
9 something that was substantially shorter. And we  
10 felt that it maintained the protection while  
11 allowing best practices.

12 MR. SMITH: There was discussion about  
13 best practices, was there not, in the evidence?

14 COMMISSIONER BALCH: I would have to go  
15 back and look at the transcript. But there  
16 certainly should have been, because that would be  
17 the justification argument I would make today.

18 We can go look at the transcript there if  
19 I could find it. It might take a few minutes.

20 CHAIRPERSON BAILEY: Why not when we take  
21 a break?

22 COMMISSIONER BALCH: Okay.

23 CHAIRPERSON BAILEY: We were on page 16,  
24 the top paragraph (6). The sentence -- well, it's  
25 all the second sentence: "If the existing

1 below-grade tank does not demonstrate integrity, the  
2 operator shall promptly drain the below-grade tank,  
3 remove it from service, and comply with the closure  
4 requirements of 19.15.17.13."

5           It seemed to me that we were trying to get  
6 to the point that if the existing below-grade tank  
7 does not demonstrate integrity prior to June 16,  
8 2013, the operator shall promptly drain the  
9 below-grade tank, because we have a deadline in the  
10 sentence above of June 16th.

11           But what we mean to say in that second  
12 sentence is that if there is a problem with that  
13 tank prior to the deadline we should take it out of  
14 service.

15           COMMISSIONER BLOOM: I think it might be  
16 separate. Actually, it was aimed at different  
17 goals. Perhaps the first sentence is that -- the  
18 grandfather clause. I will take a look at it,  
19 though.

20           COMMISSIONER BALCH: For clarity, I think  
21 we are still talking in that last sentence about  
22 single-walled below-grade tanks, and we might want  
23 to be specific about that. And we have other places  
24 where we talk about --

25           COMMISSIONER BLOOM: I'm sorry. I read

1 this as language that relates to making sure that if  
2 there are single-walled -- legacy single-walled  
3 below-grade tanks where a portion of the tank  
4 sidewall is below the surface and not visible, that  
5 has to come out by June 16th, 2013.

6 And the second part, I believe it to mean  
7 that if at any point up until that time the tank  
8 fails its integrity test, then the operator should  
9 drain it and remove it from service.

10 COMMISSIONER BALCH: I guess what I'm  
11 wondering is if that is redundant. Because if the  
12 tank fails an integrity test it already has to be  
13 removed.

14 COMMISSIONER BLOOM: Okay. That's a good  
15 question.

16 CHAIRPERSON BAILEY: In the paragraph  
17 below we have the same language, that if it doesn't  
18 demonstrate integrity it has to be removed.

19 So we have consistently used that last  
20 sentence to require removal if there is no  
21 integrity.

22 In paragraph (6) we have a deadline of  
23 June 16th, 2013, but we are not instructing the  
24 operators to remove tanks prior to that date if they  
25 don't demonstrate integrity.

1           COMMISSIONER BLOOM: I'm sorry. Which one  
2 are you talking about again?

3           CHAIRPERSON BAILEY: Paragraph (6).

4           COMMISSIONER BLOOM: Paragraph (6).

5           MR. SMITH: Now, that is not red  
6 underline. Is that old language?

7           COMMISSIONER BLOOM: So --

8           CHAIRPERSON BAILEY: Yes, that is old  
9 language.

10          COMMISSIONER BLOOM: So if we go -- I  
11 think what we are looking at, if we look at (5),  
12 (6), and (7) together, (5) is the case where there  
13 is a single-walled below-grade tank where the  
14 sidewalls are open for inspection.

15          CHAIRPERSON BAILEY: Uh-huh.

16          COMMISSIONER BLOOM: (6) is where a  
17 single-walled below-grade tank -- where they are not  
18 visible for inspection. And (7) is a double-walled  
19 below-grade tank which doesn't meet all of the  
20 requirements of (1) through (4).

21          COMMISSIONER BALCH: These are all for  
22 grandfathered tanks. They were all before the rule.

23          COMMISSIONER BLOOM: Yes.

24          I thought --

25          COMMISSIONER BALCH: We didn't change the

1 language in (6). We modified language in (5) and  
2 added language in (7).

3 MR. SMITH: Well, I don't know. I'm  
4 concerned about the use of the effective date of  
5 this amendment. For one thing, I think what you are  
6 going to wind up having is a repeal and replace.  
7 And the effective date of this amendment refers to  
8 which amendment?

9 And I'm afraid that that is going to be  
10 confusing, and I'm wondering if you want to pick a  
11 hard date that's far enough out that you will be  
12 relatively -- oh, Lord, that's a mess -- certain  
13 that the amendment or the replace -- repeal and  
14 replace would be effective by then.

15 But I don't know that you can really do  
16 that unless you really go well out.

17 COMMISSIONER BALCH: Would it be  
18 reasonable to put in a specific date, and then we  
19 can modify that date right up until the time we are  
20 done with that rule and submitting it for that  
21 process, and maybe add a couple months past that  
22 point, past the date that we are done?

23 MR. SMITH: By "we," I can only hope you  
24 mean including the order having been drafted.

25 COMMISSIONER BALCH: Drafted order, gone

1 through all of the process that gets it into the  
2 books.

3 The other possibility may be just to put  
4 everything to that June 16th, 2013, date and hope  
5 it's all done by then.

6 MR. SMITH: By when?

7 COMMISSIONER BALCH: June 16th.

8 MR. SMITH: I would as soon you didn't do  
9 that. Remember we have the session here  
10 intervening.

11 COMMISSIONER BALCH: Okay.

12 MR. SMITH: Maybe the thing to do is to  
13 bracket that in boldface and just put in in all caps  
14 "hard date" so that that can be changed towards the  
15 very end of the process.

16 COMMISSIONER BALCH: So when we are done,  
17 maybe put a two-month timer on it for the rest of  
18 the process.

19 It would also have to be changed to (7),  
20 or highlighted in (7), also the other places.

21 COMMISSIONER BLOOM: So previously, that  
22 used to read, in the existing pit rule: "The  
23 operator of a below-grade tank constructed and  
24 installed prior to June 16th, 2008"?

25 CHAIRPERSON BAILEY: And then they were

1 given five years after that date to close their  
2 tanks, which is how we come up with June 16th of  
3 2013.

4 COMMISSIONER BLOOM: This doesn't seem to  
5 trigger any action, right, in (5)?

6 COMMISSIONER BALCH: That's because those  
7 tanks were then grandfathered and allowed to  
8 continue.

9 COMMISSIONER BLOOM: Why don't we just  
10 leave that old date in there? Almost -- I mean, why  
11 wouldn't we leave that date in there? Anything that  
12 was constructed after that date should be built to  
13 current codes, right, that we set forth up above?

14 COMMISSIONER BALCH: Right.

15 COMMISSIONER BLOOM: Between June 16th,  
16 2008, and today, or whatever the effective date is,  
17 no new below-grade tanks that don't meet...

18 COMMISSIONER BALCH: Having been put into  
19 service. So I guess I wonder why we don't have the  
20 original -- why we couldn't have the original date.

21 CHAIRPERSON BAILEY: Well, because it says  
22 "shall close within five years after June 16th,  
23 2008," which happens to be June 16th, 2013.

24 COMMISSIONER BALCH: We are talking about  
25 (5). This is for the ones that do have all sides

1 visual, open for visual inspection.

2 CHAIRPERSON BAILEY: Okay. That's  
3 single-walled below-grade tanks.

4 COMMISSIONER BALCH: And I think the  
5 previous version of the rule would still have that,  
6 if I remember.

7 CHAIRPERSON BAILEY: "Shall comply with  
8 Subsection I or close it within five years after  
9 June 16th, 2008." So we could go ahead and put  
10 June 16th, 2013, right there, too.

11 COMMISSIONER BALCH: Because, as Mr. Bloom  
12 mentioned, there hasn't been any of these put into  
13 service since that date, or shouldn't have been.

14 CHAIRPERSON BAILEY: Shouldn't have been.

15 COMMISSIONER BLOOM: So in NMOGA's  
16 original petition they would not -- they would not  
17 remove this from service unless it doesn't meet --  
18 I'm sorry -- it doesn't meet -- unless it doesn't  
19 show integrity.

20 ( I think what we do here is just replace  
21 the effective date of this amendment with the  
22 original language, which is June 16th, 2008, and we  
23 are good. Because here we are saying even though  
24 it's single-walled, if you can inspect it and see  
25 that it's not leaking you can leave that

1 single-walled tank in service unless it doesn't  
2 demonstrate integrity, and then it has to be  
3 removed.

4 CHAIRPERSON BAILEY: But this -- the  
5 original language of the current rule says you have  
6 to close it within five years. So you have until  
7 2013 to close the single-walled below-grade tanks.

8 COMMISSIONER BALCH: That was closing all  
9 of them. I think that what we are now saying is if  
10 they have integrity and you can see all sides, that  
11 they are grandfathered, you can -- can continue to  
12 exist.

13 CHAIRPERSON BAILEY: The original rule  
14 gave a deadline of this June to comply with the  
15 requirements or to close the tank.

16 COMMISSIONER BALCH: Okay. Well, I think  
17 the original date would still apply.

18 CHAIRPERSON BAILEY: The original date is  
19 five years after June 16th, 2008, which brings it to  
20 2013.

21 COMMISSIONER BALCH: Right. Like in (6).

22 CHAIRPERSON BAILEY: Right.

23 COMMISSIONER BLOOM: Let me show you the  
24 version that I'm looking at. That did not take  
25 below-grade -- it did not take any below-grade tanks

1 out of service.

2 CHAIRPERSON BAILEY: You're looking at the  
3 proposal?

4 COMMISSIONER BLOOM: Yeah.

5 CHAIRPERSON BAILEY: What page is that?

6 COMMISSIONER BLOOM: Page 18.

7 CHAIRPERSON BAILEY: Their proposal says  
8 they don't have to be removed from service.

9 COMMISSIONER BLOOM: Right.

10 CHAIRPERSON BAILEY: And we're saying that  
11 they do. The old rule says that they do.

12 COMMISSIONER BALCH: The new rule --

13 COMMISSIONER BLOOM: I don't read the old  
14 rule that way.

15 COMMISSIONER BALCH: Well, that's the way  
16 I think everybody else read it.

17 COMMISSIONER BLOOM: Because the old --  
18 let's see. The old paragraph (6) gave people until  
19 June 16, 2008, if it was single-walled or any  
20 portion of the tank walls below the ground surface  
21 were not visible, then it had to be removed.

22 CHAIRPERSON BAILEY: Within five years.

23 COMMISSIONER BLOOM: Within five years,  
24 yes.

25 But if it was single-walled -- because the

1 old paragraph (5) read: "Operator below-grade tank  
2 constructed and installed prior to June 16th, 2008,  
3 which does not meet all of the requirements of  
4 paragraph (1) through (4) is not -- is not included  
5 in paragraph (6), is not required to equip or  
6 retrofit the below-grade tank so long as it  
7 demonstrates integrity. If it does not demonstrate  
8 integrity, then the operator shall promptly remove  
9 that tank from service and install" -- it used to  
10 say "and install below-grade tank." How can we make  
11 them install one if they don't want to install one?

12 COMMISSIONER BALCH: I think -- I don't  
13 know if I could make just a general comment. Some  
14 of these things that we are approaching now we  
15 deliberated extensively earlier on, and I hate to  
16 second-guess. I mean it's a good idea to go back  
17 and look at what we did and make sure it does what  
18 we thought it did. But completely restarting a  
19 deliberation on it may not be the most effective use  
20 of our time.

21 CHAIRPERSON BAILEY: Unless we've had just  
22 a real complete change of heart and need to try  
23 to...

24 COMMISSIONER BALCH: Yes. I think that  
25 the -- what the -- what the proponents were asking

1 for, essentially, was to be able to grandfather some  
2 of these tanks that would have had to have been  
3 removed or registered -- or not registered -- or  
4 permitted in the previous version of the Rule 17.

5 And in that regard, in (5), (6), and (7),  
6 we broke out three cases of those tanks. Well,  
7 there's actually four cases.

8 You have below-wall tanks that are visible  
9 on all sides. You have double-walled tanks below  
10 grade that you don't have visible on all sides. And  
11 then you have single-walled tanks in both of those  
12 categories.

13 The concern was -- the greatest concern  
14 was -- from a safety point of view -- is  
15 single-walled tanks that you can't see all sides.

16 COMMISSIONER BLOOM: Yeah.

17 COMMISSIONER BALCH: Because you cannot  
18 demonstrate integrity.

19 COMMISSIONER BLOOM: Right.

20 COMMISSIONER BALCH: Double-walled tanks  
21 that you can't see all sides there are other ways  
22 you can test the integrity of the tank. Any tank  
23 that you can see all sides you can do a visual  
24 inspection of integrity.

25 So again, I don't want to second-guess our

1 earlier deliberation. And if you want to make  
2 substantial changes to more than just a date, then  
3 we probably ought to go back and look at what we --  
4 what we discussed before.

5 COMMISSIONER BLOOM: Right. I'm not quite  
6 sure. I think we're still on the same page. I just  
7 think there is a bit of confusion.

8 So in (5), the question here is just the  
9 portion in yellow?

10 COMMISSIONER BALCH: I think it's the  
11 date. And I want to say that because all operators  
12 have known for four and a half years that this  
13 deadline was coming that maintaining that original  
14 date would not be a burden at all.

15 However, in (5), if they can demonstrate  
16 the integrity they don't have to remove it. That's  
17 the addition.

18 That's probably changing our modifications  
19 in (1) through (4) of this section, which I would  
20 have to go back and review.

21 Now, those are the new specifications.

22 Okay. My understanding of (5) is if you  
23 have a single-walled tank that does not otherwise  
24 meet the new standard but demonstrates integrity you  
25 can leave it in place; otherwise, you must remove it

1 by X date.

2 COMMISSIONER BLOOM: On (5)?

3 COMMISSIONER BALCH: That's my  
4 interpretation of (5).

5 COMMISSIONER BLOOM: Your interpretation  
6 is that if it's a below-grade tank --

7 COMMISSIONER BALCH: All sides are visible  
8 for inspection.

9 COMMISSIONER BLOOM: -- they must be  
10 removed?

11 COMMISSIONER BALCH: And if all sides are  
12 open for inspection.

13 COMMISSIONER BLOOM: That's your  
14 interpretation of it as it reads there?

15 COMMISSIONER BALCH: That's what I am  
16 reading right there.

17 COMMISSIONER BLOOM: I don't read it that  
18 way.

19 COMMISSIONER BALCH: I don't think it has  
20 to be removed if it demonstrates integrity.

21 COMMISSIONER BLOOM: Correct. It does not  
22 have to be removed if it demonstrates integrity.

23 COMMISSIONER BALCH: Right. And I think  
24 that's the intent.

25 COMMISSIONER BLOOM: Right.

1           COMMISSIONER BALCH: In (6) we do the same  
2 thing -- or the same thing -- this is for  
3 single-walled tanks where a portion of the tank wall  
4 is not visible. And these we left as having to be  
5 removed because you cannot demonstrate integrity.

6           COMMISSIONER BLOOM: Correct.

7           COMMISSIONER BALCH: And for (7) you  
8 essentially have the same case as (5) except you  
9 have a double-walled tank.

10          COMMISSIONER BLOOM: Yes.

11          CHAIRPERSON BAILEY: So the only issue  
12 before us is to substitute the language that's there  
13 that says the effective date of this amendment --

14          COMMISSIONER BALCH: Right.

15          CHAIRPERSON BAILEY: And to choose a date.

16          COMMISSIONER BALCH: Right. And I think  
17 for (5), at least, that date should be --

18          COMMISSIONER BLOOM: I think that date  
19 should -- I don't know why it still wouldn't read  
20 June 2008, because nobody has put in a single-walled  
21 below-grade tank without the sidewalls being open  
22 for inspection since then.

23          COMMISSIONER BALCH: Originally they gave  
24 them five years. You want to make sure that --  
25 well, I think it's kind of a moot point. Because in

1 that five years nobody has been able to install a  
2 single-walled tank that didn't have -- I don't think  
3 anybody has been able to install a single-walled  
4 tank at all.

5 CHAIRPERSON BAILEY: We have had a lot of  
6 closures though.

7 COMMISSIONER BALCH: Yes. So I mean, you  
8 could put in the hard date or you could put five  
9 years from -- from 2008, if you want to be  
10 absolutely precise. But none have been installed  
11 since that date anyway.

12 I think either way it works.

13 CHAIRPERSON BAILEY: Commissioner Bloom,  
14 are you concerned that there could be an operator  
15 that would install a below -- single-walled  
16 below-grade tank where the sides are not visible at  
17 some point between now and June 16th?

18 COMMISSIONER BLOOM: No, they couldn't do  
19 that given the current ruling.

20 COMMISSIONER BALCH: Well, no, there would  
21 be --

22 COMMISSIONER BLOOM: We could say  
23 effective this effective date.

24 COMMISSIONER BALCH: But I think there  
25 would be a window where, if this rule were put in

1 place in May, and then in June you can't put any  
2 more of these tanks, then somebody could put in a  
3 tank and it would be grandfathered, in that  
4 one-month period. And that's a little slack, and  
5 that's probably why we put the effective date of  
6 this amendment.

7 COMMISSIONER BLOOM: So we are not  
8 changing any of the requirements for the tanks, so  
9 that -- I don't think any -- I don't think tanks  
10 installed during the current rule, the tanks with  
11 the new rule would be any different, with the  
12 requirements.

13 CHAIRPERSON BAILEY: The difference is  
14 that currently tanks are permitted where, with the  
15 approval of what we are working on, they would be  
16 registered.

17 COMMISSIONER BLOOM: Would be registered,  
18 yeah.

19 COMMISSIONER BALCH: Permitted, full-sided  
20 criteria, all of that stuff.

21 COMMISSIONER BLOOM: No, I'm fine, if we  
22 want to just throw a date up there. I think it...

23 COMMISSIONER BALCH: Well, I think you can  
24 either put the date of whatever we are going to call  
25 this repeal on -- repeal and replace, not an

1 amendment, right?

2 MR. SMITH: No, it's not. I don't believe  
3 it would be technically called an amendment. I  
4 think if you can come up with a hard date you are  
5 better off.

6 COMMISSIONER BALCH: Okay. If you want to  
7 remove the gray area, then go back to the language  
8 that says that was installed prior to 2011.

9 CHAIRPERSON BAILEY: Let's just put  
10 June 16, 2013. That way we're consistent with  
11 paragraph (5) and paragraph (6) and paragraph (7).  
12 Because that also has that language, "effective date  
13 of this amendment."

14 COMMISSIONER BLOOM: Okay. I'm okay with  
15 that. I think it comes out the same in the end.  
16 So...

17 COMMISSIONER BALCH: At this rate we may  
18 be past June 16 by the time we are done, anyway. It  
19 takes a month -- two months to go through the  
20 vetting process and all of that for it to become an  
21 official rule.

22 MR. SMITH: Do you know that? I don't,  
23 Theresa.

24 MS. DURAN-SAENZ: It usually is about 60  
25 days because we have to provide the information,

1 file it with records and archives, and then they  
2 post at the end of each month.

3 COMMISSIONER BALCH: And even when we are  
4 done with deliberation we will probably -- there  
5 will be a time period where the rule is being  
6 finalized. And then we will come back and look at  
7 it again. And then -- then we will have to  
8 actually --

9 CHAIRPERSON BAILEY: Sign the order.

10 COMMISSIONER BALCH: That's when we will  
11 sign the order. So there's many months before  
12 probably that all happens.

13 CHAIRPERSON BAILEY: So Mr. Smith's  
14 suggestion was simply put in brackets and bold "hard  
15 date."

16 MR. SMITH: Even then it will be, of  
17 course, an estimate. And you will want to put a  
18 hard date in that's pretty well out there. I mean,  
19 you want to have your hard date after the effective  
20 date of your repeal and replace. You don't want to  
21 take a risk of it being before.

22 COMMISSIONER BALCH: Well, leaving  
23 June 16th, 2013, keeps the rule in line with the  
24 original -- not the original -- the previous version  
25 of the rule, where the operators have five years

1 from June 16th, 2008, to comply. So this shouldn't  
2 surprise anybody, that they still have to make their  
3 tanks comply or remove them before that date. It  
4 maintains the original date.

5 MR. SMITH: I guess what I just -- I'm  
6 confused about, as long as you brought me into this,  
7 is, the date there has to do with the installation  
8 of it not the compliance date. And if --

9 COMMISSIONER BALCH: Oh. And we have this  
10 wrong, now. This is not right.

11 MR. SMITH: I mean, this is original. And  
12 it was prior to -- I'm assuming what you meant by  
13 the effective date of this amendment was the  
14 effective date of the amendment that inserted that  
15 language. So it would look to me like it should  
16 be -- it looked to me like it should be June 16th,  
17 2008. And then if you want them to have five years  
18 to comply...

19 COMMISSIONER BLOOM: No, this isn't making  
20 anybody comply. The original language was  
21 June 16th, 2008. I think that's probably okay to  
22 just leave it like that.

23 MR. SMITH: Oh. I would think...

24 COMMISSIONER BALCH: I think that fixes  
25 it, actually. You don't have to do anything else.

1 Basically, there's two things that happen. As long  
2 as it maintains integrity it can stay. And if it  
3 stops demonstrating integrity it has to be removed.

4 CHAIRPERSON BAILEY: So we can delete the  
5 suggested language by industry of inserting the  
6 effective date of this amendment?

7 COMMISSIONER BALCH: Yes.

8 CHAIRPERSON BAILEY: And retain the  
9 June 16, 2008, date.

10 COMMISSIONER BALCH: All right. Let's  
11 look quickly at (6) and (7). I think it's the same  
12 change for (6).

13 CHAIRPERSON BAILEY: It is, which holds to  
14 the current dates cited in the current rule.

15 COMMISSIONER BALCH: I believe this will  
16 apply to (7) as well.

17 MR. SMITH: Now, this is another matter.

18 COMMISSIONER BALCH: Oh, yeah. There  
19 definitely could have been double-walled tanks  
20 installed in the last five years. So this may be  
21 where we have to put our own date.

22 There would not have been any  
23 double-walled tanks installed that did not meet the  
24 requirements.

25 CHAIRPERSON BAILEY: Because as of 2009,

1 at the latest, all other below-grade tanks in which  
2 the sidewalls are not open for visible inspection  
3 shall be double-walled with leak detection  
4 capability.

5 COMMISSIONER BALCH: Basically, they --  
6 yeah, I think we can use the June 16, 2008, date  
7 because everything else since then would have used  
8 these requirements.

9 Basically, these three paragraphs are the  
10 grandfather clause.

11 MR. SMITH: Well, but this is entirely new  
12 language.

13 COMMISSIONER BLOOM: No, this is being  
14 modified from existing language.

15 COMMISSIONER BALCH: Essentially (5), (6),  
16 and (7) address the same thing for three different  
17 kinds of tanks.

18 COMMISSIONER BLOOM: Oh, I'm sorry. (7).  
19 Yeah, that is the language that we put in.

20 MR. SMITH: So if that's new language that  
21 you have put in, the -- the other paragraphs that  
22 reference June 16th, 2008, are grandfathering in  
23 tanks installed prior to the date that this  
24 regulation took effect.

25 If (7) is entirely new language it would

1 seem to me that you would need to grandfather in  
2 tanks that were installed prior to the date that  
3 this new language becomes law.

4 COMMISSIONER BALCH: No, I think there  
5 might be a little bit of confusion there.

6 MR. SMITH: No doubt.

7 COMMISSIONER BALCH: This paragraph (7)  
8 addresses -- we are addressing the old double-walled  
9 tanks, pre-2008 double-walled tanks.

10 MR. SMITH: Why pre-2008?

11 COMMISSIONER BALCH: Because since 2008  
12 they're -- any new tank that has been installed has  
13 already met the requirements.

14 CHAIRPERSON BAILEY: They all have to be  
15 double-walled.

16 MR. SMITH: All right. So this is based  
17 on the assumption of compliance with the prior law.

18 COMMISSIONER BALCH: Yes. This is -- this  
19 was --

20 MR. SMITH: Okay.

21 COMMISSIONER BALCH: No, not that. This  
22 case was left out.

23 MR. SMITH: Okay. All right. Yeah. I  
24 don't -- then I think -- and I think that you can  
25 fairly assume that. I just wanted to make sure that

1 there weren't operators that were in compliance  
2 since 2008 that are now caught short. But you are  
3 avoiding that.

4 COMMISSIONER BALCH: They are all in  
5 compliance.

6 MR. SMITH: Then I think that's fine.

7 COMMISSIONER BALCH: Okay.

8 CHAIRPERSON BAILEY: Are we ready to move  
9 on?

10 MR. SMITH: I'm glad I could make that  
11 more difficult for you, Jami.

12 CHAIRPERSON BAILEY: I appreciate that.

13 COMMISSIONER BALCH: If you want to go to  
14 the previous section, I have found our discussion of  
15 the well --

16 CHAIRPERSON BAILEY: Oh, okay.

17 COMMISSIONER BALCH: And it starts on  
18 page 28 of the deliberation which is -- I think it's  
19 in Volume 12. Volume 13, I'm sorry.

20 And indeed, we do go through this  
21 discussion about the unnecessary detail and the  
22 language specification.

23 I did, indeed, bring up the best practices  
24 discussion that was from testimony. And I haven't  
25 scrolled down to see why we didn't change it in (5),

1 or maybe we just didn't even look at it in (5) at  
2 that time.

3 That's all the discussion we had. I think  
4 maybe we need to look at (5). We borrowed the  
5 language from (5), modified it the way we saw fit,  
6 and then didn't do anything with (5).

7 CHAIRPERSON BAILEY: Because it was  
8 current language that was not proposed for  
9 amendment.

10 COMMISSIONER BALCH: Yes. Now having said  
11 that, would it be reasonable to go back and change  
12 that language to match our new version of the  
13 language that we are using for multi-well fluid  
14 management pits?

15 MR. SMITH: I think you can change for  
16 consistency sake.

17 CHAIRPERSON BAILEY: All right.

18 MR. SMITH: I hope I said that before.

19 COMMISSIONER BALCH: I think we didn't  
20 talk about it before. In this particular case I  
21 don't think we talked about it before, this  
22 particular issue.

23 We didn't have that discussion about  
24 replacing the existing language in (5), unless it  
25 was in a different part of the deliberation.

1           MR. SMITH: Yes. I think as long as you  
2 have the evidence that you need for -- for the  
3 original change, and you want to change others for  
4 consistency, assuming that the other ones that you  
5 change are similar, then I would think that you  
6 would want to make that change.

7           COMMISSIONER BALCH: So we modeled the  
8 multi-well fluid management pits and the design  
9 after permanent pits.

10          MR. SMITH: Right.

11          COMMISSIONER BALCH: We came up with what  
12 we felt was a better description of how to work with  
13 the seams for multi-well fluid management pits, and  
14 then we didn't retroactively apply that to  
15 permanent. Perhaps we ought to.

16          CHAIRPERSON BAILEY: Well, what we can do  
17 is go to page 16, see what we've required for  
18 multi-well management pits, and then compare that  
19 with the requirements on page 12 for permanent pits.

20                 And if we feel like the multi-well  
21 management pit section covers what needs to be  
22 covered, we can insert the words to include  
23 permanent pit in that section, and then delete the  
24 section on permanent pits. That would be the  
25 easiest way, if we are being consistent, to just

1 have both of them in the one section rather than two  
2 separate sections.

3 MR. SMITH: As long as, in doing that,  
4 whatever effective changes are being made to the  
5 permanent pits, are they being made based on  
6 evidence or based on consistency?

7 CHAIRPERSON BAILEY: We would make the  
8 construction requirements for permanent pits  
9 absolutely consistent with the multi-well permanent  
10 pits, that -- we did have quite a bit of testimony  
11 and discussion.

12 COMMISSIONER BLOOM: So one difference  
13 that sticks out in the permanent pits -- well, for  
14 multi-well fluid management pits -- when we are  
15 talking about the slope requirements 2-to-1 on the  
16 inside, 3-to-1 on the outside, we added "for  
17 multi-well fluid management pits, the appropriate  
18 division district office may approve an  
19 alternative," and we don't have that under permanent  
20 pits.

21 CHAIRPERSON BAILEY: And we have a volume  
22 limitation on permanent pits that we don't have on the  
23 multi-well.

24 COMMISSIONER BALCH: But there was no  
25 discussion, and that's a language that we cannot

1 change.

2 CHAIRPERSON BAILEY: We cannot change  
3 that. So my suggestion does not work out, then. We  
4 will have to do it section-by-section, then.

5 COMMISSIONER BALCH: Well, we are there  
6 now, I guess.

7 CHAIRPERSON BAILEY: Page?

8 COMMISSIONER BALCH: Oh, I see it.

9 Is there a reason why we cannot replace G  
10 (5) in permanent pits with J (2) for multi-well?

11 CHAIRPERSON BAILEY: Well, G (1) also  
12 talks about foundations.

13 COMMISSIONER BALCH: We merged -- it looks  
14 like we merged some of that language together into  
15 one paragraph.

16 CHAIRPERSON BAILEY: Actually, G (5) was  
17 replaced -- or it could be replaced with J (6),  
18 because both of those have to do with minimizing  
19 liner seams and the description on...

20 COMMISSIONER BLOOM: (5) -- Paragraph (5)  
21 for permanent pits?

22 CHAIRPERSON BAILEY: G (5), yes.

23 COMMISSIONER BLOOM: G (5), yes.

24 That's a testing requirement, as well, we  
25 don't have in (6).

1                   COMMISSIONER BALCH: This comes back to  
2 the discussion of best practices, I guess.

3                   CHAIRPERSON BAILEY: And both of them have  
4 the detail of no horizontal seams within 5 feet of  
5 the toe's slope -- or the slope's toe.

6                   COMMISSIONER BLOOM: I just haven't heard  
7 any testimony related to testing which would allow  
8 us to take that out.

9                   COMMISSIONER BALCH: Well, I think it was  
10 in our deliberation. We -- we didn't talk about the  
11 case of permanent pits. However, in all other  
12 instances, we modeled the construction of a  
13 multi-well fluid management pit as a permanent pit.

14                   So we got to a point where we were okay  
15 with leaving the testing out and leaving it to the  
16 best practices, because liner materials were evolved  
17 and they should be installed by factory personnel  
18 who understand the best way to install a liner with  
19 integrity.

20                   So I'm guessing we didn't feel like we  
21 needed a test there. The original rule, then, in  
22 regards to permanent pits, they did have that  
23 testing there.

24                   The concern that I had, and I think that  
25 Commissioner Bailey shared when we were discussing

1 it in the deliberations, was that there was very  
2 specific -- and because it was so specific it would  
3 be hard to determine if -- it would be very hard to  
4 verify, first of all, if that was done between 35  
5 and 37 psi, for example. And if a better liner came  
6 out that had a different ceiling characteristic,  
7 then the operator is stuck using the old design  
8 because they have to have a bubble between the two  
9 rows of pressure, 35 to 37 psi.

10 COMMISSIONER BLOOM: Well, I'm following  
11 you there. I just don't know that -- if we can  
12 subtract that from permanent pits. Because --

13 COMMISSIONER BALCH: I'm pretty sure in  
14 multi-well we say seamed and tested, and we allow  
15 the testing to be best practices in that case,  
16 because you are not specifying a particular test.

17 I'm not having a problem with the testing  
18 of the seams. I think they ought to be tested. My  
19 concern is it's so specific that it disallows an  
20 evolution of material.

21 MR. SMITH: Now there was testimony in  
22 that regard, was there not?

23 CHAIRPERSON BAILEY: Not in permanent  
24 pits.

25 COMMISSIONER BLOOM: No.

1           COMMISSIONER BALCH: No, in regard to  
2 multi-well. So we are backtracking.

3           COMMISSIONER BLOOM: Yeah. Permanent  
4 pits' proponents didn't seek any changes. So...

5           MR. SMITH: One of the things you need to  
6 be careful of, and maybe this is so obvious I  
7 needn't state it. But I think that you want to be  
8 careful of using permanent pits as your model for  
9 multi-wells, then making changes in multi-wells, and  
10 in order to make it consistent going back and making  
11 changes in the permanent.

12          COMMISSIONER BLOOM: That's what we are  
13 talking about doing right now. And --

14          MR. SMITH: And that -- I think that is a  
15 matter of some concern.

16          COMMISSIONER BLOOM: I'm --

17          CHAIRPERSON BAILEY: Well, we can just  
18 leave it as it is. There is really no...

19          COMMISSIONER BALCH: Okay. I think that's  
20 fine. And if a better design comes out later on  
21 somebody will have to reopen the...

22          CHAIRPERSON BAILEY: Or ask for a  
23 variance, because multi-well pits are permitted at  
24 the district level.

25          COMMISSIONER BALCH: Well, multi-well pits

1 are not the problem. The problem would be if  
2 someone were to want to use a different design for a  
3 permanent pit.

4 CHAIRPERSON BAILEY: And in Santa Fe they  
5 would get an exception.

6 COMMISSIONER BALCH: They would have to  
7 get an exception. Okay. Well, there's not -- it's  
8 not like there's so many permanent pits out there  
9 that it's going to come up every day.

10 CHAIRPERSON BAILEY: True. And as long as  
11 we have the ability for an operator to apply for  
12 either a variance or an exception on this rule, then  
13 I think we are allowing for the evolution of best  
14 practices.

15 COMMISSIONER BALCH: In a cumbersome way,  
16 yes.

17 CHAIRPERSON BAILEY: Yes.

18 Well, let's go to page 18. And I realize  
19 that that's all a yellow area that we will get to.  
20 But paragraph (5), the very last sentence is  
21 redundant for the sentence before. And we have  
22 eliminated that to allow qualified personnel and not  
23 necessarily the operators welding the liner seams.  
24 So I would suggest that before we even look at this  
25 section we just delete that last sentence.

1 COMMISSIONER BALCH: That's redundant.

2 CHAIRPERSON BAILEY: Yes.

3 Then I have other issues -- oh. Well, we  
4 could go to page 23, "Closure and Site  
5 Requirements."

6 And there are just a couple of typos that  
7 I found on page 23 C (4), fifth line from the top of  
8 that paragraph which begins, "shall stabilize or  
9 solidify the waste." We need an E right there.

10 And then two lines down from that point,  
11 rather than saying the word "missing" ratio we need  
12 "mixing" ratio.

13 We can't talk about the different tables,  
14 so we will skip page 24.

15 But I was looking on page 25, which is  
16 C (2), comparing paragraph (2) with paragraph (4).

17 Page 25, paragraph (4), talks about  
18 notification to the district office verbally and in  
19 writing at least 72 hours. If we just included  
20 "operator of a multi-well fluid management pit" in  
21 paragraph (2) above, then we could delete that  
22 paragraph.

23 If you will scroll up to paragraph (2), we  
24 have the same requirements of notification. We  
25 could say "the operator of a temporary pit,

1 multi-well fluid management pit," would take care of  
2 the same language and requirement as we have in  
3 paragraph (4) below.

4 COMMISSIONER BLOOM: Yes.

5 COMMISSIONER BALCH: Yes.

6 CHAIRPERSON BAILEY: So let's delete  
7 paragraph (4). And that changes (5) into (4).

8 We have a potential ambiguity setting up.

9 COMMISSIONER BALCH: In (2), did you  
10 change -- did you add the multi-well fluid  
11 management pit up in (2)?

12 CHAIRPERSON BAILEY: Yes, she put that in  
13 there.

14 COMMISSIONER BALCH: Okay.

15 CHAIRPERSON BAILEY: If you will look on  
16 page 22, the last paragraph before 19.50.17.13...

17 COMMISSIONER BLOOM: "The operator shall  
18 remove all fluids," that one?

19 CHAIRPERSON BAILEY: Yes. "The operator  
20 shall remove all fluids" -- and here we're talking  
21 about a multi-well fluid management pit -- "within  
22 60 days from the date that the operator ceases all  
23 stimulation operations."

24 If you will look over on page 26, E (1),  
25 we have an operator closing the multi-well fluid

1 management pit within 60 days of cessation of  
2 operation.

3 I just want to be sure that in this  
4 paragraph and in the subsequent paragraph we don't  
5 have conflicts with our date requirements.

6 COMMISSIONER BLOOM: Yes, there is a  
7 conflict with (5) below, as well, E (5).

8 COMMISSIONER BALCH: Uh-huh.

9 COMMISSIONER BLOOM: "An operator shall  
10 close a multi-well fluid management pit within 6  
11 months."

12 COMMISSIONER BALCH: I think probably the  
13 way to resolve that would be to take multi-well  
14 fluid management pit out of E (1).

15 CHAIRPERSON BAILEY: Out of what?

16 COMMISSIONER BALCH: The removal of  
17 "multi-well fluid management pit" from E (1).

18 Then the specifications on page 22 and  
19 Section (5) on page 26 will cover it.

20 I think we did not intend on having the  
21 same time line. So -- well, I'm not sure what the  
22 intention is. But that will fix the problem.

23 They -- they are different things, even  
24 though we have them designed similarly. Permanent  
25 pit is designed for holding produced water,

1 primarily. A multi-well fluid management pit is  
2 temporary in nature and holds other chemicals.

3 CHAIRPERSON BAILEY: Well, paragraph (5)  
4 on page 22 says they have to remove all fluids  
5 within 60 days.

6 And page 26 says they have to close within  
7 6 months.

8 COMMISSIONER BALCH: Yes.

9 CHAIRPERSON BAILEY: Yes. That is what we  
10 wanted to do.

11 COMMISSIONER BALCH: I think if we just  
12 take that language that's highlighted now out of (1)  
13 the problem goes away.

14 CHAIRPERSON BAILEY: It does, doesn't it.

15 COMMISSIONER BLOOM: That will work.

16 CHAIRPERSON BAILEY: Okay. We have the  
17 same on page 26, paragraph (2), that talks about  
18 closing a permitted temporary pit within 6 months.

19 If we look at the definition of "Temporary  
20 Pit," back over on page 3, I want to be sure that we  
21 don't have a potential conflict of dates there.

22 The definition says that the pit must be  
23 closed in less than one year from the spud date of  
24 the first well.

25 And page 26 says that there has to be

1 closure of the permitted pit within 6 months from  
2 releasing the drill -- drilling rig.

3 COMMISSIONER BALCH: Maybe the problem is  
4 really with the definition and not the closure  
5 process. Because we spent time talking about the  
6 closure and what was a good allowable time and  
7 things that would trigger it.

8 So if we were to make a change I would  
9 suggest changing the definition a little bit, if  
10 necessary.

11 CHAIRPERSON BAILEY: So the definition  
12 would read: "The temporary pits must be closed in  
13 within 6 months from the date the operator releases  
14 the drilling or workover rig."

15 COMMISSIONER BALCH: Since the pit would  
16 not have fluids in it until that rig is on site,  
17 that effectively limits -- it would -- it would be  
18 probably more so within a year. I'm assuming --

19 COMMISSIONER BLOOM: I have some concerns  
20 about how long a temporary pit is going to be open  
21 somewhere.

22 CHAIRPERSON BAILEY: Because we have had  
23 multiple wells using temporary pits.

24 COMMISSIONER BALCH: Yes, it's possible.

25 COMMISSIONER BLOOM: Because the original

1 temporary pit was 6 months. The current temporary  
2 pit is, what? 6 months?

3 Yes. So it would hold liquids for less  
4 than 6 months and be closed within one year.

5 CHAIRPERSON BAILEY: An operator shall  
6 close the existing -- oh.

7 COMMISSIONER BALCH: This -- the  
8 definition that we came up with later for closure is  
9 probably going to, in almost in every case, be more  
10 stringent than a year. It's going to be shorter.

11 The -- you're not going to have --  
12 basically, the pit will go into service when the  
13 well is spudded. Your drilling rig is there for any  
14 time from a week to probably a month and a half for  
15 a really deeper oil well.

16 And then within 6 months of releasing the  
17 rig they are going to shut it down.

18 The operator is not going to keep a rig on  
19 site just to hold a pit for a longer period of time.

20 COMMISSIONER BLOOM: I think it -- what if  
21 there were multiple temporary pits, and that one  
22 temporary pit which used to hold liquid for just  
23 6 months is now holding liquids for 18 or 24 months?

24 CHAIRPERSON BAILEY: This way we can have  
25 multiple wells being drilled using that same

1 temporary pit.

2 COMMISSIONER BLOOM: Yeah.

3 COMMISSIONER BALCH: But when you -- you  
4 have language in there that we can maintain, which  
5 is the spud date of the first well using the pit.  
6 And that would necessarily minimize that concern.

7 CHAIRPERSON BAILEY: So you're saying that  
8 there's no conflict between the definition  
9 requirements and the timing requirement for closure?

10 COMMISSIONER BLOOM: I think -- didn't the  
11 proponents want 6 months to close the pit after all  
12 of it has been removed because of weather issues in  
13 the northwest and so on?

14 CHAIRPERSON BAILEY: Uh-huh.

15 COMMISSIONER BALCH: I think in most cases  
16 they are not going to sit around. There will be  
17 cases where there could be, or certainly rainwater  
18 and stuff like that.

19 But I think if -- if you add the language  
20 "close within 6 months from the date of the  
21 operator -- the date the operator releases the  
22 drilling or workover rig," which is consistent with  
23 our -- our definition in the closure portion of the  
24 document, and then keep that tied to the spud date  
25 of the first well using the pit, and then the

1 multi- --

2 COMMISSIONER BLOOM: So we are going to  
3 keep the spud date in there?

4 CHAIRPERSON BAILEY: The spud date is in  
5 the definition.

6 COMMISSIONER BLOOM: Right. So we are  
7 going to do that plus the 6 months?

8 COMMISSIONER BALCH: The only thing we  
9 would take out is "in less than one year from  
10 the" -- no. "In less than one year." Just remove  
11 "in less than one year."

12 All right. So even if they have 23 wells  
13 associated with the pit they have 6 months from when  
14 they spud the first well. That's the one that goes  
15 into service.

16 CHAIRPERSON BAILEY: So you're saying  
17 change the language from "the date the operator  
18 releases the drilling or workover rig" to "the  
19 date -- the spud date of the first well using the  
20 pit"?

21 COMMISSIONER BALCH: Yeah, there is  
22 confusion now. Maybe it would say "associated with  
23 the first well using the pit," not the spud date.

24 MR. SMITH: Right.

25 COMMISSIONER BALCH: So replace "spud

1 date" with "first well using the pit."

2 COMMISSIONER BLOOM: That doesn't read  
3 right, though.

4 CHAIRPERSON BAILEY: That removes any kind  
5 of conflict.

6 MR. SMITH: Is it not possible, if the  
7 operator will drill the wells in series and use the  
8 same workover rig in the first well, then the next  
9 well, then the next well -- or drilling rig, but not  
10 release it?

11 COMMISSIONER BALCH: What this does --  
12 from the first well. If you have three wells  
13 associated with a -- with a pit --

14 MR. SMITH: Right.

15 COMMISSIONER BALCH: -- which would be,  
16 probably, an extreme scenario, most likely. We have  
17 not seen that because -- except for maybe in the  
18 case of drilling.

19 They drill the first well. When that well  
20 is done they release the rig from that well. It  
21 goes to the next well.

22 MR. SMITH: It will be released, it just  
23 won't simply move to the next well?

24 COMMISSIONER BALCH: It's a different  
25 well.

1 CHAIRPERSON BAILEY: It's a different  
2 well. So there's a release process from the first  
3 well to go to the second well.

4 MR. SMITH: Okay. All right.

5 COMMISSIONER BALCH: So this is  
6 actually -- I think this is better than having a  
7 hard year. This ties into closure requirements.  
8 And also, this is going to make it less than a year,  
9 I think virtually in every case.

10 COMMISSIONER BLOOM: Okay. I can live  
11 with that.

12 CHAIRPERSON BAILEY: Okay. And that  
13 removes that conflict, too. All right.

14 And that's as far as I got.

15 COMMISSIONER BLOOM: Do we want to go back  
16 and -- should we go back and accept the language  
17 for -- go back and accept the language for  
18 alternatives to defining depth to groundwater?

19 CHAIRPERSON BAILEY: Oh, okay. That was  
20 on page --

21 COMMISSIONER BLOOM: On page 5.

22 Yeah, there it is, in red.

23 COMMISSIONER BALCH: So the one gray area  
24 in here that I think still merits some discussion --  
25 correct me if I'm wrong -- is -- okay.

1           So you're an operator, you want to put a  
2 well, you want to put a pit in place where there's  
3 not a lot of groundwater there. You have some  
4 indication that it's deep, so you are not too  
5 concerned about it. You apply for your permit.

6           At the same time as you're applying for  
7 your permit you have to have a closure permit. Say  
8 you want to close on the site.

9           Should there be -- I don't know about a  
10 requirement, but should they, perhaps, have to  
11 revise their --

12           CHAIRPERSON BAILEY: Update a closure plan  
13 in accordance with what they discover for depth to  
14 groundwater?

15           COMMISSIONER BALCH: Yes. Do you want to  
16 make them -- I mean, because they would have access  
17 to that data. Do you want to make them update their  
18 data before they can close or is it covered by  
19 the -- you have to have an alternate closure plan,  
20 too, right? Usually that's hauled away, I think.

21           CHAIRPERSON BAILEY: We are deleting that  
22 alternate closure plan.

23           COMMISSIONER BALCH: Okay.

24           CHAIRPERSON BAILEY: But what we can have  
25 is what we have, like, for surface waste management

1 pits, is the closure plan is not approved until --  
2 or closure has to be in accordance with requirements  
3 at the time of closure.

4 COMMISSIONER BALCH: Okay.

5 CHAIRPERSON BAILEY: So in 30 -- or  
6 6 months. If there has been a change in closure  
7 requirements for a temporary pit they would have to  
8 follow the new closure requirements.

9 COMMISSIONER BALCH: Okay. So if you are  
10 an operator and you have now drilled your well,  
11 you're not automatically going to go and do a  
12 cathodic well analysis?

13 CHAIRPERSON BAILEY: You might have a dry  
14 hole. Why do it?

15 COMMISSIONER BALCH: I think it's probably  
16 not really an issue, because we have -- we have  
17 division offices that are going to be approving  
18 these things.

19 So I just wanted -- I mean, there is a  
20 gray area.

21 CHAIRPERSON BAILEY: But I think we need  
22 to allow different methods or different ways for an  
23 operator to --

24 COMMISSIONER BALCH: Absolutely.

25 CHAIRPERSON BAILEY: -- get the data

1 that's necessary. And that would include modeling,  
2 cathodic well protection, whatever they can find  
3 that would give a reasonable depth to groundwater.

4 COMMISSIONER BALCH: And if the office  
5 says, Well, we would like you to have some better  
6 groundwater data before closure, that's up to them?

7 CHAIRPERSON BAILEY: Yes. And they will  
8 do that.

9 COMMISSIONER BALCH: Okay. I'm good with  
10 it.

11 CHAIRPERSON BAILEY: Okay. Then we can  
12 agree to allow that language which appears in 17.9  
13 B (2).

14 It also appears in 17.9 B (4) -- oh, (3)  
15 and (4)..

16 Those are the only places I'm finding it  
17 right off the bat.

18 And yesterday we did agree to allow the  
19 standardized plans for pit construction. Am I  
20 correct on that?

21 COMMISSIONER BALCH: I think that was back  
22 in September.

23 CHAIRPERSON BAILEY: Okay. So all of that  
24 yellow for temporary pits --

25 COMMISSIONER BALCH: I think it's already

1     been removed.

2                   CHAIRPERSON BAILEY:   -- has been removed.

3     Okay.   We are good.

4                   COMMISSIONER BLOOM:   So then if we could  
5     scroll down to below-grade tanks, are we okay with  
6     registration of below-grade tanks?

7                   CHAIRPERSON BAILEY:   Rather than  
8     permitting or requiring registration at all?

9                   COMMISSIONER BALCH:   I think this is  
10    another discussion we had in September.   And at that  
11    point we were good with it.

12                   CHAIRPERSON BAILEY:   And that allows the  
13    standardized plans.

14                   COMMISSIONER BALCH:   We had a lot of  
15    deliberation about standardized plans and how long  
16    data should be kept and all of that material.

17                   CHAIRPERSON BAILEY:   Uh-huh.

18                   COMMISSIONER BLOOM:   I mean, I think the  
19    standardized plan is fine, because otherwise  
20    companies are just submitting a standardized pit  
21    design --

22                   COMMISSIONER BALCH:   Well, you would  
23    hope --

24                   COMMISSIONER BLOOM:   -- that's in the  
25    file.

1           COMMISSIONER BALCH:  -- that they would  
2    come up with a design based on best practices that's  
3    going to be compliant.  And then once they have come  
4    up with that, you would hope they would copy it --

5           CHAIRPERSON BAILEY:  They do.

6           COMMISSIONER BALCH:  -- and use it for all  
7    of their other wells that they could, or all their  
8    other tanks.

9           COMMISSIONER BLOOM:  So are we -- Madam  
10   Chair, are we -- are we going to -- are below-grade  
11   tanks going towards registration from permits?

12          CHAIRPERSON BAILEY:  Yes.

13          COMMISSIONER BLOOM:  So that language, we  
14   accept registration?

15          CHAIRPERSON BAILEY:  I believe, yes.

16          COMMISSIONER BALCH:  We modified the  
17   paragraph.

18          COMMISSIONER BLOOM:  We can accept the  
19   following language of registration of below-grade  
20   tank?  We can accept "demonstrates compliance with  
21   the siting criteria"?

22          CHAIRPERSON BAILEY:  Yes.

23          COMMISSIONER BALCH:  There's a number of  
24   places in the document where we can kind of clean  
25   up, and I think there's a couple of other things

1 that we still can address today that we can do,  
2 maybe, before we go through and start the general  
3 cleanup.

4 The first one would be the deleted  
5 material in the modified NMOGA Exhibit 3, which is  
6 now Exhibit 20.

7 I think we can address that, even though  
8 some of that material is related to Tables I and II,  
9 because the deletions were considered not important  
10 by you.

11 CHAIRPERSON BAILEY: However, there are  
12 many areas of the proposed deleted sections that  
13 apply to standards that have now been consolidated  
14 in I and II and we cannot touch those.

15 COMMISSIONER BALCH: So we will wait on  
16 that.

17 CHAIRPERSON BAILEY: Yes.

18 COMMISSIONER BALCH: Okay. Then the other  
19 thing is closure.

20 CHAIRPERSON BAILEY: Right.

21 COMMISSIONER BALCH: And I think we can  
22 talk about closure without talking about the now  
23 tabulated limits.

24 CHAIRPERSON BAILEY: Yes, I think we can.  
25 Don't you?

1           COMMISSIONER BLOOM: I agree we can  
2 certainly take a look at that. I'm just -- now back  
3 to this, maybe we can accept all of the proposed  
4 changes for the below-grade tank definition.

5           COMMISSIONER BALCH: The other thing we  
6 can possibly do today is go through and just kind of  
7 clean up on the material that we have already  
8 covered.

9           CHAIRPERSON BAILEY: The next area in  
10 yellow is on page 7, where we talk about siting  
11 requirements for temporary pits for non low chloride  
12 fluids.

13           And we still have the setback for wetland  
14 in yellow.

15           COMMISSIONER BLOOM: Correct.

16           COMMISSIONER BALCH: We did that  
17 yesterday, didn't we?

18           CHAIRPERSON BAILEY: I thought we had, but  
19 it's still yellow on page 7. So...

20           COMMISSIONER BLOOM: That distance used to  
21 be 500 feet.

22           CHAIRPERSON BAILEY: We are talking  
23 temporary pits. Yes, it was 500 feet.

24           COMMISSIONER BALCH: This was a proposed  
25 change by the proponents.

1 CHAIRPERSON BAILEY: Theresa, we are at  
2 (3) (f) on page 7. Yes, there.

3 It's 100 feet for low chloride, 300 feet  
4 for non low chloride.

5 MR. SMITH: Do I misunderstand here?  
6 Might these figures not change depending on what you  
7 determine to be low and non low chloride?

8 CHAIRPERSON BAILEY: What?

9 MR. SMITH: The reference that you just  
10 made is X feet for chloride -- for low chloride, and  
11 X feet for non low chloride?

12 CHAIRPERSON BAILEY: Yes. And the  
13 setbacks are different for wells.

14 MR. SMITH: Right.

15 COMMISSIONER BALCH: But the number for  
16 the low chloride is not what we are talking about  
17 here. We are talking about everything else.

18 MR. SMITH: So it wouldn't make any  
19 difference. Of course. All right. I see.

20 CHAIRPERSON BAILEY: Okay. Had we agreed  
21 on the 300 feet for wetland?

22 COMMISSIONER BALCH: I think we had before  
23 yesterday. And then, I think Mr. Bloom maybe wanted  
24 to go and refresh his memory, and that's why we  
25 highlighted it.

1           COMMISSIONER BLOOM: I'm reading my notes  
2 on some of this.

3           COMMISSIONER BALCH: Well, we certainly  
4 had adequate testimony about -- on this subject.

5           CHAIRPERSON BAILEY: Yes. We covered this  
6 one quite well.

7           COMMISSIONER BLOOM: What is your  
8 recollection of that?

9           COMMISSIONER BALCH: Well, the  
10 justification for the change was based on testimony  
11 of Dr. Buchanan, in particular.

12          COMMISSIONER BLOOM: Dr. Buchanan was  
13 speaking more about soils, right?

14          COMMISSIONER BALCH: Well, maybe I'm  
15 thinking about Dr. Thomas.

16                 If we want to -- if we want to reopen the  
17 data question, we'll have to go back and look at our  
18 deliberations, simply because the topic is not fresh  
19 in my mind.

20          CHAIRPERSON BAILEY: You might want to put  
21 that as a note.

22                 Why don't we take a break, by the way, and  
23 come back at a quarter till.

24                 (A recess was taken from 10:36 a.m. to  
25 10:46 a.m.)

1 CHAIRPERSON BAILEY: We will go back on  
2 the record.

3 We were still on the question of 300 feet  
4 setback for a wetland in the non low chloride fluid  
5 areas.

6 You were going to look for --

7 COMMISSIONER BALCH: I was, and I didn't.

8 CHAIRPERSON BAILEY: -- discussion on  
9 that.

10 Well, then, we can wait until after lunch  
11 on that.

12 COMMISSIONER BALCH: Okay. I think I  
13 stumbled upon something. Well, it's in Mr. Harper's  
14 testimony.

15 CHAIRPERSON BAILEY: It seems like  
16 Dr. Buchanan also talked about it.

17 COMMISSIONER BALCH: Well, he was asked  
18 about it on cross. It wasn't --

19 CHAIRPERSON BAILEY: Okay.

20 COMMISSIONER BALCH: Well, Mr. Harper  
21 apparently spoke about it extensively here. Let me  
22 just go back and find it.

23 It was during a general discussion of  
24 setbacks, and then we specifically spoke about  
25 wetlands.

1           Some of it was actually also for vertical  
2 distances to groundwater.

3           Let's see. I have a large number of  
4 citations. Mr. Bloom, on page 3101, in that area.

5           If we want to continue this discussion at  
6 some later time it might be worth --

7           COMMISSIONER BLOOM: Yeah.

8           COMMISSIONER BALCH: -- everyone --

9           COMMISSIONER BLOOM: Page 301?

10          COMMISSIONER BALCH: 3101.

11          COMMISSIONER BLOOM: 3101.

12          COMMISSIONER BALCH: And I can sort of  
13 summarize it if you want. And actually I did, in  
14 the record here on page 3101.

15                 "To summarize what I thought the industry  
16 argument was, you're reducing -- the reason that  
17 they were using low chloride fluids is because the  
18 risk was low and it reduced the chance that the  
19 response would be able to adequately deal with it;  
20 and, therefore, the setbacks would be closer, both  
21 vertically and horizontally. And that,  
22 operationally, it fit in -- it was in line with what  
23 other states had done."

24                 Then we start talking about KCL, which is  
25 probably going to be the largest component of low

1 chloride for this.

2 Let's see. Wetlands -- the wetlands  
3 reference was a little bit lower, maybe about 3105  
4 or so. I can get back to it.

5 Volume 15, when we were talking about  
6 siting criteria. And it looks like it was a very  
7 extensive discussion. So to recap that we'd  
8 probably have to review it. It covers the entire  
9 document.

10 COMMISSIONER BLOOM: Okay. I will review  
11 that. I'm tempted to say I'm not supportive of  
12 changing that buffer from 500 feet to 300 feet, just  
13 given the fact that we are doing a couple of other  
14 things with the pits. We are increasing the amount  
15 of time that there are to be liquids in the pit, we  
16 have more wells using one pit.

17 COMMISSIONER BALCH: On page 3211 of  
18 Volume 15 is where we specifically have a discussion  
19 about 500 versus 300 feet setback.

20 We may have already had -- well, not  
21 completely reading the record in detail, we may have  
22 already reached a point where we had accepted the  
23 setbacks and maybe voted line items through them.  
24 You may have already voiced your disagreement.

25 COMMISSIONER BLOOM: Yeah. It might be in

1 the minutes, actually.

2 COMMISSIONER BALCH: Basically, it looks  
3 like Commissioner Bailey and myself had concluded  
4 that it was consistent with the 300-foot offset to a  
5 watercourse.

6 And then I refer back to the citations I  
7 gave, in 3101, I think. So you might want to look  
8 at the direct testimony as well.

9 And it does look like we were at the point  
10 where that may have been a split decision.

11 Do you have the minutes?

12 COMMISSIONER BLOOM: I don't, not handy.

13 COMMISSIONER BALCH: On September 27 is  
14 where we talk about it.

15 CHAIRPERSON BAILEY: Shall we move along,  
16 then, to page 9, which is the next area that I have  
17 a notation in yellow, where it talks about on-site  
18 closure methods, C, and setbacks.

19 COMMISSIONER BLOOM: Yes.

20 CHAIRPERSON BAILEY: Okay. On-site  
21 closure method, the first one was where groundwater  
22 is less than 25 feet. The second part, Section (2)  
23 there, was for waste that exceed the concentration  
24 limits.

25 Okay. These are the rules for where we do

1 not allow implementation of on-site closure methods.

2 And then (3) is in yellow. And that was  
3 setback from continuously flowing watercourses and  
4 whether or not there were setbacks for other  
5 significant watercourses.

6 COMMISSIONER BLOOM: So which part of this  
7 would you like to discuss?

8 CHAIRPERSON BAILEY: We had cross-outs for  
9 C (3). But in Section 17.10 A we do allow a  
10 200-foot setback.

11 Okay. We do not allow temporary pits with  
12 low chloride fluids within 200 feet of lakebed.  
13 There's some discrepancy here between siting  
14 requirements of 17.10 A (1) (b) and 17.10 C (3).

15 COMMISSIONER BALCH: It seems like C (3)  
16 should -- I mean at the very least, in C -- I mean,  
17 we are sort of talking about a little bit of  
18 different things. One is siting and one is closure.  
19 But we are not addressing the case of significant  
20 watercourses, lakebed, sinkhole, or playa lakes, for  
21 sure in C (3) or anywhere in C that I can see, that  
22 I could find.

23 CHAIRPERSON BAILEY: Well, A --

24 COMMISSIONER BALCH: Here we go.

25 CHAIRPERSON BAILEY: A (1) (b) says you

1 won't have a temporary pit containing low chloride  
2 fluids within 100 feet of a continuously flowing --  
3 watercourse -- that's the same -- or any other  
4 significant watercourse. And that language is  
5 deleted.

6 So why would we allow burial for on-site  
7 closures within 200 feet of significant watercourse  
8 if we're not allowing a temporary pit within  
9 200 feet -- within 100 feet?

10 COMMISSIONER BLOOM: I would agree with  
11 that.

12 COMMISSIONER BALCH: Yes, that should  
13 definitely be made consistent.

14 CHAIRPERSON BAILEY: Uh-huh.

15 COMMISSIONER BALCH: I have reviewed a  
16 little bit of our deliberation and some of -- some  
17 of this may be a little bit of a moot point. Of  
18 course you can always find an exception for  
19 anything. But Dr. Buchanan didn't think there would  
20 be any pits that close anyway, because the  
21 groundwater -- you would be violating other site  
22 criteria.

23 However, that said, you can always find a  
24 place where it's not going to work.

25 Yeah, that doesn't make sense. How could

1 you have closure closer than the pit?

2 CHAIRPERSON BAILEY: Right.

3 COMMISSIONER BLOOM: On site.

4 CHAIRPERSON BAILEY: So we could change  
5 the language in C (3) to reflect the language of A  
6 (1) (b), so that (3) would say "within 100 feet of  
7 any continuously water -- flowing watercourse or  
8 other significant watercourse."

9 COMMISSIONER BLOOM: Scroll down a little  
10 bit.

11 COMMISSIONER BALCH: Some of that  
12 strike-through in (3), maybe that was a slip of the  
13 mouse or something.

14 CHAIRPERSON BAILEY: Uh-huh.

15 COMMISSIONER BLOOM: I think the part  
16 "unless the division approves an alternative  
17 distance based upon the operator's demonstration  
18 that surface and groundwater will be protected," I  
19 don't really think that applies, because --

20 COMMISSIONER BALCH: These are hard  
21 limits.

22 COMMISSIONER BLOOM: -- they are actually  
23 doing it on the site of the pit. So...

24 CHAIRPERSON BAILEY: So right off the bat  
25 we can delete from those words "unless the division

1 approves" all the way to the end of the sentence.

2 And then --

3 MR. SMITH: May I ask you, what does the  
4 word "ordinary" add there? What is an "ordinary  
5 high-water mark"?

6 COMMISSIONER BALCH: I think that was in  
7 the existing language.

8 MR. SMITH: Pardon?

9 COMMISSIONER BALCH: I think that's  
10 existing language.

11 You know, I could not tell you.

12 CHAIRPERSON BAILEY: That is already  
13 language in permanent pits, where I found it just  
14 right off the bat.

15 COMMISSIONER BALCH: If you are just  
16 curious, I can give you a guess.

17 MR. SMITH: Well, I hate to take your time  
18 to satisfy my curiosity, but I'm happy to let you do  
19 it.

20 COMMISSIONER BALCH: "Ordinary" would be  
21 probably a median or mode average depth. So what --  
22 if you went out there on a hundred different days  
23 what would you expect to see on it.

24 MR. SMITH: It isn't a high-water mark,  
25 then.

1                   COMMISSIONER BALCH: No. It's not the  
2 ultimate high-water mark, no. Your ultimate  
3 high-water mark, then you are talking about  
4 floodplains and things like that, or rivers. And  
5 that could be quite extensive. All of downtown  
6 Carlsbad, for example.

7                   MR. SMITH: Okay.

8                   CHAIRPERSON BAILEY: So we have accepted  
9 everything in yellow there, because we've accepted  
10 17.10 A (1) (b).

11                   Then in (4), shall we accept the word  
12 "occupied"?

13                   COMMISSIONER BLOOM: I think that would  
14 make sense. We have been doing that throughout.

15                   CHAIRPERSON BAILEY: Yes. And on (5),  
16 let's compare those setbacks with what we have  
17 accepted in 17.10 A, within 300 feet of a private  
18 domestic water well or spring.

19                   Well, actually, in (a) we have 200 feet.  
20 So that change to 300 would make sense, wouldn't it?  
21 I mean it's either farther away than...

22                   COMMISSIONER BALCH: Right. And you're  
23 talking about --

24                   CHAIRPERSON BAILEY: -- where the pit  
25 would be.

1           COMMISSIONER BALCH:  -- other than non  
2 chloride fluids.  And 300 feet, that was testified  
3 to.

4           COMMISSIONER BLOOM:  So you're comparing  
5 that to --

6           CHAIRPERSON BAILEY:  A (1) (d).

7           COMMISSIONER BLOOM:  Which is 200 feet to  
8 a domestic fresh water well, 300 feet for any other.

9           COMMISSIONER BALCH:  I think that sounds  
10 consistent.

11          CHAIRPERSON BAILEY:  Commissioner Bloom,  
12 are you...

13          COMMISSIONER BLOOM:  That gets a -- gets a  
14 little tricky for me because I didn't support the  
15 creation of the low chloride fluid category of  
16 temporary pits.  So --

17          CHAIRPERSON BAILEY:  Oh, okay.

18          COMMISSIONER BLOOM:  -- yeah.  So I will  
19 just -- you-all can proceed with that.

20          COMMISSIONER BALCH:  We may really have to  
21 go back to the minutes and see where we had up and  
22 down votes on some of these things.

23          CHAIRPERSON BAILEY:  Right.

24          COMMISSIONER BALCH:  Because if we are  
25 just going to reopen the debate that we already had,

1 I think we are not likely to change the position.

2 COMMISSIONER BLOOM: Right.

3 CHAIRPERSON BAILEY: At this point we can  
4 say -- do you vote to accept the change as indicated  
5 to 300 feet, or a setback from a non low chloride  
6 fluid pit proposed --

7 COMMISSIONER BALCH: I think we may have  
8 already done this.

9 CHAIRPERSON BAILEY: Maybe so. But  
10 it's -- there's still the strikeout there.

11 COMMISSIONER BALCH: Madam Chair?

12 CHAIRPERSON BAILEY: Yes.

13 COMMISSIONER BALCH: If we are at the  
14 point where the remainder of the deliberations today  
15 will be refining the document to the point that we  
16 have talked about already, we might as well go  
17 through and fix all the strikeouts at once.

18 CHAIRPERSON BAILEY: I agree with you.  
19 You are correct.

20 So shall we just look at the yellow  
21 highlighted areas first and reach some sort of --  
22 discuss them where we can?

23 COMMISSIONER BLOOM: Sure.

24 CHAIRPERSON BAILEY: The next yellow  
25 highlighted area I have is on page 17. It talks

1 about burial closures -- burial trenches for  
2 closures.

3 But the problem with that is that it  
4 references Subsection B of 13.

5 COMMISSIONER BALCH: Which is?

6 CHAIRPERSON BAILEY: It has to do with  
7 closure and site reclamation requirements.

8 COMMISSIONER BALCH: Well, we have already  
9 worked through that.

10 CHAIRPERSON BAILEY: We have, except 13 C  
11 is the area that we have not reached.

12 COMMISSIONER BLOOM: If you move a little  
13 further down, on page 18 you can borrow that  
14 language. We could accept that, knowing more about  
15 what happens above.

16 For example, Number (2), I'm sure we have  
17 agreement that a trench shall have a properly  
18 constructed foundation and sidewalls, et cetera,  
19 et cetera.

20 COMMISSIONER BALCH: I'm trying to  
21 remember why we highlighted this entire section.

22 CHAIRPERSON BAILEY: I think because we  
23 just completely skipped over closure and burial at  
24 the time.

25 COMMISSIONER BALCH: Well, we have

1 certainly put off the closure discussion until the  
2 end.

3 CHAIRPERSON BAILEY: Right.

4 COMMISSIONER BALCH: So we may be at that  
5 point.

6 CHAIRPERSON BAILEY: But there are  
7 portions within this yellow highlighted area, as  
8 Commissioner Bloom said, that we can agree on.

9 COMMISSIONER BALCH: Okay. We can refine  
10 that.

11 COMMISSIONER BLOOM: I don't have any ---  
12 I would be fine accepting the proposed language (2)  
13 through (8).

14 COMMISSIONER BALCH: Okay. (2) through  
15 (8).

16 Is the language in (5) consistent with  
17 what we ---

18 COMMISSIONER BLOOM: You need to fix that.  
19 Maybe you can remove the last sentence in (5).

20 CHAIRPERSON BAILEY: "The operator  
21 shall" -- oh, the last sentence in (5) was what we  
22 had that's consistent with --

23 COMMISSIONER BALCH: We are done with  
24 that.

25 COMMISSIONER BLOOM: We did delete

1 something. Okay. Yeah.

2 COMMISSIONER BALCH: Okay. I'm okay with  
3 accepting (2) through (8) as well.

4 CHAIRPERSON BAILEY: I am also. So we can  
5 remove yellow highlight from those sections.

6 COMMISSIONER BALCH: The next thing would  
7 be (9) and (10), to see if we can all agree on those  
8 deletions.

9 CHAIRPERSON BAILEY: Dr. Buchanan was  
10 insistent that there was no need for a geomembrane  
11 cover, that that created more problems than it  
12 solved for burial of waste in trenches.

13 COMMISSIONER BALCH: Now, this is a --  
14 this is a separate liner on top of whatever foldover  
15 you already have.

16 CHAIRPERSON BAILEY: We already have the  
17 taco, and this would create the burrito.

18 COMMISSIONER BALCH: I'm all right with  
19 those deletions.

20 COMMISSIONER BLOOM: I focused in on some  
21 of Dr. Neeper's fieldwork. And he talked about  
22 finding salt at the top of a buried liner. Salt had  
23 migrated upward, which he saw in some of his  
24 modeling. We have found it in the real world, too.

25 His testimony is at pages 1167 and 1168.

1 And again, he talked about salt in the root zone,  
2 salt at 12 inches going down to 24 inches, on  
3 page 818.

4 And he said he would use a cover to stop  
5 unsaturated flow upward.

6 So I'm in support of leaving this  
7 unchanged and keeping the cover language as it is.

8 COMMISSIONER BALCH: One thing to remember  
9 from Dr. Neeper's testimony is that he was dealing  
10 with legacy pits. And in a case where he saw salt  
11 under a liner, what he's referring to there is  
12 really the foldover, not a separate geomembrane  
13 above that, which is what (9) and (10) refer to.

14 So it may be, you know, if not apples and  
15 oranges, it might be Rayburns and red delicious. I  
16 don't know.

17 There was a -- a lot of discussion on  
18 direct and even more discussion in cross-examination  
19 about the usefulness of a top liner. And I can't  
20 remember if we discussed that already when we  
21 highlighted this section.

22 CHAIRPERSON BAILEY: No, I don't think we  
23 have.

24 COMMISSIONER BALCH: That's something I  
25 would want to go back and look at my notes.

1 CHAIRPERSON BAILEY: I would like to look  
2 at my notes. I would like to read Dr. Neeper's  
3 transcript also. Those were pages 1167, -68, and  
4 page 818?

5 COMMISSIONER BLOOM: 818, yes. And then I  
6 had another citation for page 1291.

7 COMMISSIONER BALCH: Could you read those  
8 off please? 1167 --

9 COMMISSIONER BLOOM: Yeah. 1167, line 8,  
10 through 1168, line 5.

11 Also in his -- it says Neeper's closing,  
12 page 5. His closing is...

13 COMMISSIONER BALCH: It appears that  
14 Mr.- -- on page 577, lines 2 through 20, and on  
15 page 578, lines 6 to 15, Mr. Arthur gave testimony  
16 about the lack of a top cover and also on a bathtub  
17 effect.

18 COMMISSIONER BLOOM: I'm sorry. Can you  
19 start over? What was that one again?

20 COMMISSIONER BALCH: 577 and 578.

21 So that might be worth going back over and  
22 reviewing as well.

23 COMMISSIONER BLOOM: I'm sorry. What was  
24 that about?

25 COMMISSIONER BALCH: His testimony

1 regarding the lack of top cover.

2 COMMISSIONER BLOOM: This is whose  
3 testimony? I'm sorry.

4 COMMISSIONER BALCH: Mr. Arthur.

5 COMMISSIONER BLOOM: Okay.

6 COMMISSIONER BALCH: Also lack of -- I  
7 have in quotes here "a bathtub effect."

8 COMMISSIONER BLOOM: There would not be a  
9 bathtub effect?

10 COMMISSIONER BALCH: No, there would be.  
11 Maybe he was asked this on cross. I would have to  
12 go back and look at the citation. I was pulling out  
13 citations that I think may be relevant for us to  
14 look at. I don't know what he said about it without  
15 looking back.

16 I don't have anything listed for Buchanan,  
17 but it may have been that I wasn't looking for it  
18 either.

19 Let's see. It looks like Mr. Arthur's  
20 testimony was the concern that if you put too much  
21 seal over the top it wasn't so much of a concern  
22 about water getting into the material, it was that  
23 it was getting out. That's one of the -- that's  
24 part of the citation that I gave you.

25 Then you are also sealing whatever liquids

1 are in there.

2 Let's see. He doesn't seem to think that  
3 the concern has to do with the precipitation getting  
4 down, either. That's why he talked about the  
5 bathtub effect, that it wasn't a big deal. So maybe  
6 the place to look is Dr. Neeper's testimony.

7 CHAIRPERSON BAILEY: Right. And I'm  
8 looking at the findings of the Citizens for Clean  
9 Air and Water. And it does talk about finding that  
10 salt below the plastic cap which prevents migration  
11 of salt upward.

12 But I would like to look at the transcript  
13 for these other citations before we make any  
14 decision on deletion of portions (9) and (10) of  
15 Section 11.

16 COMMISSIONER BLOOM: Okay.

17 COMMISSIONER BALCH: You know, I didn't  
18 have it in my notes, maybe because I didn't think of  
19 that issue when I was reading the transcripts the  
20 first time through. But I really do recall  
21 Dr. Buchanan having a vigorous disagreement with  
22 caps.

23 CHAIRPERSON BAILEY: He was vigorous in  
24 his assertions. Because he said that it was  
25 necessary to prevent the bathtub effect and

1 something to do with the rooting systems. But I  
2 would like to look at Dr. Neeper's before I make any  
3 statement on the record.

4 So we can go to the next section of  
5 yellow, which is on page 20. And it has to do with  
6 hydrocarbon-based drilling fluids and whether or not  
7 a sealed tank or other material is the appropriate  
8 way to contain hydrocarbon-based drilling fluids.

9 Mr. Bloom, do you have an opinion on this  
10 one?

11 COMMISSIONER BLOOM: I'm --

12 COMMISSIONER BALCH: You are looking at  
13 the strikeout -- the highlighted strikeout?

14 CHAIRPERSON BAILEY: Yes.

15 COMMISSIONER BLOOM: I -- I believe the  
16 evidence testimony was that the industry would use a  
17 tank that would be appropriate for containing  
18 hydrocarbon-based drilling fluids. So you give them  
19 the option of deciding whether they want to use  
20 steel or something else.

21 CHAIRPERSON BAILEY: Or is it that they  
22 wanted to be able to use a lined temporary pit  
23 without having to use steel tanks whenever  
24 hydrocarbon-based drilling fluids --

25 COMMISSIONER BALCH: That's really what

1 this comes down to, is whether you are going to  
2 allow hydrocarbon-based drilling fluids into a  
3 temporary pit.

4 CHAIRPERSON BAILEY: Uh-huh.

5 COMMISSIONER BALCH: It basically  
6 disallows it.

7 Now the conflict in my mind about having  
8 that limitation is, when you hit an oil zone in your  
9 drilling you are going to put hydrocarbons into your  
10 temporary pit. So I think the hydrocarbon drilling  
11 fluids are based off of heavy components of oil and  
12 diesel, things like that, right? Those aren't  
13 volatiles.

14 I'm pretty sure that we had this  
15 discussion before.

16 CHAIRPERSON BAILEY: But there are many  
17 additives that don't use hydrocarbon base for the  
18 older purposes of using diesel; that there are many  
19 newer drilling fluids that serve the same purpose  
20 but are not hydrocarbon based, such as referenced  
21 here. And those manufactured fluids are even better  
22 for the environment than for the operator.

23 COMMISSIONER BLOOM: R360's comments,  
24 which they provided us on May 2nd, page 9, Number 5,  
25 they are -- the subsection is titled: "Steel tanks

1 should continue to be required for hydrocarbon-based  
2 drilling fluids. NMOGA's modifications still remove  
3 the existing requirement that operators use steel  
4 tanks or other NMOCD-approved methods to contain  
5 hydrocarbon-based drilling fluids.

6 "Hydrocarbon-based drilling fluids are  
7 more toxic than water- and synthetic-based drilling  
8 fluids. The increased risks hydrocarbon-based  
9 drilling fluids pose warrant additional protections  
10 beyond those the pit rule provides for temporary  
11 pits. Steel tanks provide this additional  
12 protection. Removing the requirement that operators  
13 contain hydrocarbon-based drilling fluids in steel  
14 tanks increases the risk of contamination to  
15 groundwater and soils."

16 It goes on from there to OCD's -- what  
17 it's supposed to regulate, sampling conducted by OCD  
18 in 2007.

19 "Hydrocarbon-based drilling fluids contain  
20 many of the types of toxic chemicals that the pit  
21 rule is designed to protect against.

22 "Most operators have already invested in  
23 steel tanks to store their hydrocarbon-based  
24 drilling fluids."

25 COMMISSIONER BALCH: I guess I'm a little

1 bit confused about this paragraph.

2 Do they -- does this mean that when you're  
3 not drilling you're storing your hydrocarbon-based  
4 drilling fluids in a tank, or that they always have  
5 to be contained in the tank?

6 To me there's a distinction, Mr. Bloom.

7 If you're drilling, in the active process  
8 of drilling, and you are using a hydrocarbon-based  
9 drilling fluid, you can't store it in a tank unless  
10 you are using a closed-loop system. You would have  
11 to be circulating it in your mud pit.

12 However, at times during your operation  
13 where you are not drilling, is that what they are  
14 talking about here?

15 I can understand not wanting to leave the  
16 hydrocarbon-based drilling fluid within the pit for  
17 the 6 months that it might be sitting there. But  
18 I'm not sure if you -- I think you limit best  
19 practices if you don't let them circulate the  
20 drilling fluids in a temporary pit. It's the  
21 purpose of the temporary pit.

22 Do I have that wrong, Mr. Bloom?

23 CHAIRPERSON BAILEY: My interpretation is  
24 that you may not use hydrocarbon-based drilling  
25 fluids unless you're using a tank for --

1 COMMISSIONER BALCH: That's the way this  
2 reads.

3 CHAIRPERSON BAILEY: Yes.

4 COMMISSIONER BALCH: And why I think -- I  
5 think that's the reason for the strikeout.

6 Now, I think it is a valid concern that  
7 you don't want to leave those fluids sitting in  
8 there. But the sheen and the visible -- I would  
9 think a visible and measurable sheen would take care  
10 of that as well, in the requirement to remove fluids  
11 when they weren't drilling, right?

12 Let me ask another question, if you don't  
13 mind, Commissioner Bailey.

14 Where are these fluids being used right  
15 now, to your knowledge?

16 CHAIRPERSON BAILEY: To my knowledge, they  
17 are only in the southeast and only going through  
18 certain formations. So it's not --

19 COMMISSIONER BALCH: So it is a safety  
20 issue, not an op- -- so it's not something that you  
21 would pick to do, you do it because you have to for  
22 certain zones?

23 CHAIRPERSON BAILEY: For certain zones.

24 COMMISSIONER BALCH: So it's not a common  
25 occurrence. Do you know what the formations are?

1           CHAIRPERSON BAILEY: No. I really don't,  
2 no. I'm not that conversant with that.

3           COMMISSIONER BALCH: Keep in mind, also,  
4 that the temporary pit is -- it's temporary. Fluids  
5 will be removed. And if they are doing on-site  
6 closure that material, once mixed, has to pass a  
7 variety of criteria that we haven't discussed yet.  
8 So if the hydrocarbon drilling fluid would cause it  
9 to go above a limit that we will discuss later, it  
10 wouldn't be buried on-site either.

11          CHAIRPERSON BAILEY: I would have less  
12 concern about hydrocarbon-based drilling fluids if  
13 there was some restriction in place for the use of  
14 those fluids through freshwater protection zones.  
15 But there's nothing on the books that says you  
16 cannot use drilling fluids while you have uncased  
17 sections. So your drinking water aquifers.

18          COMMISSIONER BALCH: However, this -- this  
19 doesn't address that. And that's a concern.

20          CHAIRPERSON BAILEY: Yes.

21          COMMISSIONER BALCH: I agree. However,  
22 this doesn't address that concern. Because this one  
23 just forces you to use a closed-loop system, but it  
24 doesn't have anything to do with the casing. It  
25 just has to do with what's going on on the surface.

1 CHAIRPERSON BAILEY: That's true.

2 COMMISSIONER BALCH: This doesn't address  
3 the circulating fluid.

4 CHAIRPERSON BAILEY: That's true. This  
5 really does have to do with spills and leaks and  
6 surface issues and the requirement for the  
7 closed-loop systems.

8 COMMISSIONER BLOOM: I see a few words or  
9 paragraphs, getting over to -- pertaining to the  
10 steel tank or other storage material that OCD can  
11 approve.

12 I don't see a lot on what the costs or the  
13 inconveniences are of using a steel tank or other  
14 device that keeps the hydrocarbon-based fluids out.

15 COMMISSIONER BALCH: If you are using a  
16 steel tank in this scenario you are using a  
17 closed-loop system, and there was a lot of testimony  
18 about closed-loop systems.

19 Basically, this forces a closed-loop  
20 system for the case of hydrocarbon-based drilling  
21 fluids. You have to have that drilling fluid  
22 completely contained at all times.

23 COMMISSIONER BLOOM: I'm familiar with  
24 diesel being one of the hydrocarbon-based drilling  
25 fluids, essentially. A pit full of diesel is a

1 pretty different beast from a pit with water-based  
2 fluids.

3 COMMISSIONER BALCH: I think it's  
4 difficult, really, to -- I think it is different.  
5 But that water-based drilling fluid could have other  
6 additives which are -- which are also -- also make  
7 it essentially non-water.

8 Also, when you say hydrocarbon based, I  
9 suppose an argument could be made that anything  
10 that's engineered from hydrocarbons -- even the  
11 diesel would be excluded as well. Lots of things  
12 are made with hydrocarbons, lots of additives.

13 And what makes it hydrocarbon based, I  
14 don't know if that's a percentage or what.

15 CHAIRPERSON BAILEY: It's the primary  
16 component, is what I think it reasonably means.

17 COMMISSIONER BALCH: So instead of water  
18 it uses diesel?

19 CHAIRPERSON BAILEY: Right. But there are  
20 the synthetics that have replaced the hydrocarbon,  
21 the diesel.

22 COMMISSIONER BALCH: But those are  
23 probably also technically hydrocarbon based.

24 CHAIRPERSON BAILEY: And if we do have  
25 spills, we have closure requirements and spill

1 requirements that require investigation and cleanup.

2 COMMISSIONER BLOOM: One other thing you  
3 consider -- well, you could use -- somebody could  
4 have hydrocarbon-based drilling fluids and a low  
5 chloride pit, and you'd have diesel 100 feet away,  
6 30 yards away from a wetland.

7 COMMISSIONER BALCH: Well, I think the  
8 working definition of low chloride drilling fluid  
9 does say water based.

10 CHAIRPERSON BAILEY: It includes water  
11 based.

12 COMMISSIONER BALCH: It says water based.

13 CHAIRPERSON BAILEY: It's restricted to  
14 water based.

15 COMMISSIONER BALCH: So that wouldn't be  
16 an issue. You could certainly have a low chloride  
17 hydrocarbon-based drilling fluid, but it wouldn't  
18 fit that definition. So whether -- it really falls  
19 in the category of "other."

20 CHAIRPERSON BAILEY: My initial reaction  
21 to this was negative because of the potential impact  
22 to groundwater.

23 COMMISSIONER BALCH: During the drilling?

24 CHAIRPERSON BAILEY: During the drilling,  
25 yes. But if we are assured that it's not used

1 during the drilling of the surface casing area which  
2 does penetrate aquifers, then the only downhole  
3 issue is taken away from you, and then it becomes a  
4 surface issue.

5 And if we have a closure requirement that  
6 investigates spills and we have a spill removal that  
7 investigates spots or leaks that would prevent  
8 hydrocarbon-based fluids from contaminating surface  
9 waters or groundwaters -- by talking this through  
10 I'm seeing where my concerns could allow the  
11 deletion of this language.

12 COMMISSIONER BALCH: Let me ask a  
13 question.

14 The sheens -- we talked about the sheens,  
15 measurable and visible.

16 CHAIRPERSON BAILEY: Uh-huh.

17 COMMISSIONER BALCH: These are  
18 hydrocarbon-based drilling fluids. Are you going to  
19 have a sheen --

20 CHAIRPERSON BAILEY: Obviously.

21 COMMISSIONER BALCH: -- layer?

22 COMMISSIONER BLOOM: I can't imagine how  
23 you wouldn't.

24 COMMISSIONER BALCH: So that requires you  
25 to clean that up more or less right away.

1           The concern that I have is not so much  
2 during the operational phase, particularly since you  
3 described it as something that is situationally used  
4 for safety reasons and only in particular areas in  
5 particular formations.

6           On the other hand, I don't think I want  
7 the hydrocarbon-based drilling fluids sitting there  
8 in the pit for 6 months either.

9           CHAIRPERSON BAILEY: No.

10          COMMISSIONER BALCH: So to delete this  
11 section, I would like to have language somewhere  
12 that triggers a faster removal of the wetlands after  
13 the drilling process is complete for  
14 hydrocarbon-based drilling fluids.

15          CHAIRPERSON BAILEY: I'm looking at  
16 operational requirements, to see if there is an area  
17 there.

18          COMMISSIONER BLOOM: What's the time limit  
19 for getting the liquids out of the temporary pit  
20 right now?

21          COMMISSIONER BALCH: It's 60 days after  
22 cessation of drilling. With an extension, also.

23                 Obviously there's still going to be  
24 operational constraints. But if you could change  
25 that to 30 and 30, that might be a little more

1 comfortable for or hydrocarbon-based drilling  
2 fluids.

3 And you said they are situationally used  
4 primarily in the southeast. You are going to have  
5 less in the weather concerns. 30 days should give  
6 you enough time to get a truck out there.

7 CHAIRPERSON BAILEY: I'm not finding, in  
8 the operational requirement section under temporary  
9 pits, any requirement, as we do for permanent pits,  
10 for removal of floating or oil -- floating  
11 hydrocarbons or oil present in the pit.

12 Maybe I'm just not finding it, but it's  
13 not jumping out at me.

14 COMMISSIONER BLOOM: Under temporary pits?

15 CHAIRPERSON BAILEY: Yes. On page 19 it  
16 begins "Operational Requirements."

17 COMMISSIONER BLOOM: Yeah.

18 CHAIRPERSON BAILEY: "Temporary pits."

19 It's not until you get down into 17.12  
20 C (2) where you find a ban on the presence of oil or  
21 floating hydrocarbon for permanent pits.

22 COMMISSIONER BALCH: Well, maybe the last  
23 sentence there in (1) would fix the problem.

24 Because immediately after cessation of drilling or  
25 workover operation, the operator shall remove any

1 visible or -- any visible layer of oil from the  
2 surface of the drilling pit or workover pit.

3 If you have a hydrocarbon-based drilling  
4 fluid and you remove the sheen, it's just going to  
5 keep creating a sheen.

6 CHAIRPERSON BAILEY: Uh-huh.

7 COMMISSIONER BALCH: So I think that that  
8 last sentence really makes them immediately drain  
9 the pit.

10 CHAIRPERSON BAILEY: Yes, it does.

11 COMMISSIONER BALCH: So I don't think it's  
12 particularly an issue, and you don't have to have a  
13 specific time line for it.

14 Basically, once the drilling fluid is in  
15 the pit and it's not circulating anymore, it's going  
16 to start to separate into its components. The  
17 hydrocarbon components are going to go to the top  
18 and you have to remove them.

19 CHAIRPERSON BAILEY: Immediately after.  
20 So that would take care of having them kind of --  
21 diesel.

22 COMMISSIONER BLOOM: For that period of  
23 the operating period of 3, 4, 5, 6 months you've got  
24 diesel?

25 COMMISSIONER BALCH: No, no. The drilling

1 part is really only the -- basically, they spud the  
2 well.

3 COMMISSIONER BLOOM: Oh, it's cessation of  
4 drilling.

5 COMMISSIONER BALCH: Right.

6 COMMISSIONER BLOOM: Okay.

7 COMMISSIONER BALCH: So they dig the pit.  
8 When they spud the well they fill it with the mud.  
9 And then when they are done they have to make sure  
10 there's no visible oil. If there's  
11 hydrocarbon-based drilling fluid they are going to  
12 have to basically remove all the hydrocarbon  
13 component immediately after cessation of drilling  
14 their well.

15 CHAIRPERSON BAILEY: Then I can agree to  
16 delete this sentence.

17 COMMISSIONER BALCH: I can as well.

18 COMMISSIONER BLOOM: I would rather  
19 maintain it. So I would like to vote on it, if we  
20 can do that.

21 CHAIRPERSON BAILEY: Okay. All those in  
22 favor of deleting the sentence from 17.12 B (1) that  
23 reads: "The operator shall use a tank made of steel  
24 or other material which the appropriate division  
25 district office approves to contain

1 hydrocarbon-based drilling fluids," please indicate  
2 by saying Aye.

3 COMMISSIONER BALCH: Aye.

4 CHAIRPERSON BAILEY: Aye.

5 All those opposed?

6 COMMISSIONER BLOOM: Nay.

7 CHAIRPERSON BAILEY: Then it's the  
8 majority of the commission that approves the  
9 deletion of that language.

10 (Motion passes 2 to 1.)

11 CHAIRPERSON BAILEY: And then in that same  
12 paragraph we have the question of deleting "or  
13 measurable."

14 COMMISSIONER BALCH: I think it's a little  
15 redundant. You can see -- basically, you can see it  
16 if you can measure it. It's not necessarily true  
17 that you can measure it if you can see it. Seeing  
18 it is a more stringent requirement.

19 CHAIRPERSON BAILEY: I believe it's more  
20 restrictive. So we can delete --

21 COMMISSIONER BALCH: It could be a  
22 molecule.

23 CHAIRPERSON BAILEY: -- "or measured"?

24 COMMISSIONER BLOOM: Yes.

25 CHAIRPERSON BAILEY: Are we ready for

1 lunch now or do we want to look at paragraph (4)  
2 down below?

3 We've talked about that this morning when  
4 we were talking about the potential discrepancies.

5 COMMISSIONER BLOOM: That was previously  
6 30 days, is that right? I felt like we might have  
7 already talked about this.

8 COMMISSIONER BALCH: This has been  
9 resolved, I think.

10 CHAIRPERSON BAILEY: Yes, I think it has,  
11 particularly in light of the fact that we have  
12 the -- with the definition of temporary pit.

13 COMMISSIONER BALCH: Okay. So the place  
14 where we may have to change it is at the very end  
15 where it says "not to exceed temporary pit lifespan  
16 of one year," if we change that definition.

17 "Not to exceed temporary pit lifespan," I  
18 think would be fine.

19 COMMISSIONER BLOOM: Right. We --

20 COMMISSIONER BALCH: That's just to make  
21 it consistent with our change of the definition of  
22 temporary pit that we made this morning.

23 COMMISSIONER BLOOM: What section are we  
24 in here, "Operational Requirements"?

25 CHAIRPERSON BAILEY: We are in

1 "Operational Requirements," Section 12.

2 COMMISSIONER BLOOM: I'm looking at the --

3 CHAIRPERSON BAILEY: So the current

4 language 12 B (4).

5 COMMISSIONER BLOOM: We -- we did vote on

6 this, because it used to read up to 3 months, the

7 extension. We gave them an extra 30 days up front

8 and they can apply for 60 days.

9 COMMISSIONER BALCH: Instead of 30 days

10 and the 90-day extension, with 60 and 60.

11 COMMISSIONER BLOOM: Yeah.

12 COMMISSIONER BALCH: So I think the only

13 thing we have to fix is the one year, just have it

14 tied to the temporary pit, which is defined under

15 17.7.

16 COMMISSIONER BLOOM: I could agree with

17 that.

18 COMMISSIONER BALCH: You would probably

19 have to change the numbering at some point.

20 CHAIRPERSON BAILEY: Not to exceed the

21 temporary pit lifespan?

22 COMMISSIONER BALCH: Take out the "of one

23 year."

24 CHAIRPERSON BAILEY: Yes. Okay.

25 We are all agreed on that, then?

1 COMMISSIONER BALCH: Yes.

2 COMMISSIONER BLOOM: Yes.

3 CHAIRPERSON BAILEY: Yes, we are.

4 Then we can remove the yellow highlighting  
5 on that.

6 MR. SMITH: Is the citation to Q still  
7 correct?

8 COMMISSIONER BALCH: Probably not.

9 MR. SMITH: You might want to just --

10 CHAIRPERSON BAILEY: Temporary pit is --

11 MR. SMITH: You might want to just  
12 highlight that to make sure that when they are  
13 finished --

14 CHAIRPERSON BAILEY: It's still on,  
15 because we may insert the definition for on-site.

16 MR. SMITH: Actually, that's probably true  
17 for just about any cross-reference that you find in  
18 there.

19 COMMISSIONER BLOOM: It might just be  
20 easier to go back and check them all at some point.

21 COMMISSIONER BALCH: If you highlight it  
22 we're going to go back and discuss for hours.

23 MS. DURAN-SAENZ: I could use a different  
24 color.

25 MR. SMITH: You could boldface and bracket

1 them.

2 COMMISSIONER BLOOM: We can, I guess,  
3 accept all of those changes in there to Theresa and  
4 get rid of the underline, right?

5 MS. DURAN-SAENZ: Yes.

6 MR. SMITH: Just to make it more obvious,  
7 Theresa, when you boldface and bracket the internal  
8 citations you don't just have to do the thing that  
9 is in question. Do the whole thing, and that really  
10 will bring it out.

11 CHAIRPERSON BAILEY: The next area that I  
12 find in yellow has to do with the tables.

13 COMMISSIONER BALCH: We are on page 23?  
14 I think there might be paragraph (5) at  
15 the bottom of page 23.

16 CHAIRPERSON BAILEY: Which references the  
17 table.

18 COMMISSIONER BALCH: Okay.

19 CHAIRPERSON BAILEY: And since we still  
20 have to -- so essentially, we have gone through the  
21 rule to look at the yellow areas. We have simply  
22 delayed decisions on the definition of low chloride  
23 fluids and on the definition of on-site.

24 During lunch I would like to go back  
25 through and look for Dr. Neeper's testimony

1 concerning the cover for burial of the pits. And I  
2 will also look at the setback for wetlands that was  
3 cited.

4 So that will take a little bit of time.  
5 Would we like to reconvene at 1:15?

6 COMMISSIONER BLOOM: That would be fine,  
7 yes.

8 COMMISSIONER BALCH: Do we have any other  
9 major sections to go through?

10 CHAIRPERSON BAILEY: Not really.

11 COMMISSIONER BALCH: So after that  
12 discussion after lunch we could probably go through  
13 the whole document and clean up as much as we can in  
14 preparation for next Thursday's deliberation.

15 CHAIRPERSON BAILEY: It sounds like a good  
16 afternoon's work.

17 (A recess was taken from 11:49 a.m. to  
18 1:23 p.m.)

19 CHAIRPERSON BAILEY: It's almost 1:25. We  
20 will go back on the record. We are debating and  
21 deliberating on Cases 14784 and 14785.

22 When we broke for lunch we had gone  
23 through and completed discussing many, or most of  
24 the yellow highlighted areas. But there were some  
25 that I was going to particularly check on during the

1 lunch hour. And that particularly had to do with  
2 page 18, Numbers (9) and (10), whether or not a  
3 geomembrane cover should be required over a lined  
4 trench for burial of waste materials.

5 There was the question where we had  
6 opposing opinions by Dr. Buchanan, who suggested  
7 that we not have a top liner, and Dr. Neeper, who  
8 suggested that we do have a top liner.

9 MR. SMITH: And the current requirement is  
10 that you have one?

11 CHAIRPERSON BAILEY: Yes.

12 MR. SMITH: Okay.

13 CHAIRPERSON BAILEY: After reading the  
14 transcripts, I find that I personally agree with  
15 Dr. Neeper. He describes the salt layer that formed  
16 underneath one of the pits that he was  
17 investigating. And his recommendation was to have  
18 a -- an upper cover for that burial trench.

19 In my opinion, and nothing else, it keeps  
20 the salt from going upwards to impact any kind of  
21 root zone.

22 COMMISSIONER BALCH: I did a 20-minute  
23 search of all of the direct testimony.

24 CHAIRPERSON BAILEY: Yes.

25 COMMISSIONER BALCH: And that search

1 covered top cover, cover, geomembrane. And I found  
2 nothing in direct from Dr. Buchanan. I think the  
3 issue may have come up in cross-examination.

4 CHAIRPERSON BAILEY: Yes.

5 COMMISSIONER BALCH: And I think, in the  
6 interest of being protective -- I'm not sure there  
7 was really a strong opinion from Dr. Buchanan at  
8 this point. I would have to do much deeper research  
9 to be sure of that.

10 There was evidence -- more evidence  
11 directly presented about maintaining a top cover.  
12 And a top cover, if nothing else, will ensure that  
13 there is a -- some sort of covering. And --

14 CHAIRPERSON BAILEY: You're not talking  
15 about soil cover; you're talking about a geomembrane  
16 cover?

17 COMMISSIONER BALCH: A geomembrane cover.

18 CHAIRPERSON BAILEY: Okay.

19 COMMISSIONER BALCH: I'm not sure if he  
20 was -- I think he -- I'm not even going to say he  
21 was, because maybe it was just my impression that he  
22 was.

23 However, there was not an obvious place in  
24 testimony where he discussed that.

25 CHAIRPERSON BAILEY: So do you, Dr. Balch,

1 support keeping paragraphs (9) and (10)?

2 COMMISSIONER BALCH: And these are for --  
3 here, they are talking about trenches. Is that  
4 separate from directly closing a pit? Is this where  
5 you remove the waste from the pit into a separate  
6 burial trench?

7 COMMISSIONER BLOOM: That's it. That's my  
8 recollection, yes.

9 COMMISSIONER BALCH: It says burial  
10 trenches for closure.

11 MR. SMITH: As you review this, please  
12 bear in mind that what you are looking for is  
13 substantial evidence that would support a change.  
14 Your default, of course, is leaving it the same way.

15 COMMISSIONER BALCH: I think the only  
16 substantial evidence that was presented in direct  
17 was by Dr. Neeper, in favor of keeping them.

18 MR. SMITH: Okay.

19 COMMISSIONER BALCH: There may have been  
20 comments on cross-examination of other witnesses  
21 that address the issue. But the only real direct  
22 testimony was from Dr. Neeper.

23 I think that there are probably good  
24 reasons for and against. The for would probably be  
25 a little bit stronger in my mind, so I would keep

1 those two paragraphs.

2 CHAIRPERSON BAILEY: And you, Commissioner  
3 Bloom?

4 COMMISSIONER BLOOM: Yes. Due to  
5 Dr. Neeper's testimony, which you just cited about  
6 salt rising upward being stopped by a cover, a  
7 geomembrane cover, and Dr. Neeper seeing salt in the  
8 root zone at 12 inches, going down to 24 inches, I  
9 would support leaving the current language.

10 COMMISSIONER BALCH: I will say the  
11 only -- there was direct argument against the top  
12 liner from Dr. Arthur's testimony. His concern was  
13 not in protecting the pit contents, but in allowing  
14 volatile components to go up.

15 I think that by the time the pit is buried  
16 there's not going to be a lot of volatiles left and  
17 maybe not as strong a concern.

18 CHAIRPERSON BAILEY: Then it is unanimous  
19 for the commission to retain paragraphs (9) and (10)  
20 and not delete those paragraphs.

21 So that does leave us with the cleanup, as  
22 far as I can tell.

23 Are there other topics that we need to  
24 debate today, since we do not have the closings from  
25 yesterday?

1           COMMISSIONER BALCH: Well, I would say,  
2 just as you said, we work through from the  
3 beginning. And stuff we can't talk about we hold  
4 off on.

5           COMMISSIONER BLOOM: Yeah, that would be  
6 the way to proceed.

7           COMMISSIONER BALCH: Kind of the two big  
8 things we haven't concluded yet are the low chloride  
9 fluids and the on-site discussion.

10          CHAIRPERSON BAILEY: Which we really can't  
11 do until after we have information from the past two  
12 days.

13                 So let's start at the beginning.

14          COMMISSIONER BLOOM: I don't know if we  
15 can change this. I don't know that any -- but maybe  
16 for the sake of consistency, 19.15.17.6,  
17 "Objective," that we have "protection of public  
18 health, welfare, and the environment."

19          COMMISSIONER BALCH: Did we, at any  
20 places, change -- maybe change that language  
21 slightly?

22          COMMISSIONER BLOOM: I think to human  
23 health.

24          CHAIRPERSON BAILEY: Actually, the Act  
25 says public health, doesn't it?

1 MR. SMITH: I think it does.

2 CHAIRPERSON BAILEY: I have it somewhere.

3 COMMISSIONER BALCH: Going to 17.5, maybe  
4 we can accept that change.

5 CHAIRPERSON BAILEY: I think it would be  
6 advisable to, since we are doing a repeal.

7 COMMISSIONER BLOOM: I would agree with  
8 that. "Within 30 days after publication of the  
9 final rule in the New Mexico Register unless a later  
10 date is cited at the end of a section."

11 MR. SMITH: For records, I'm told by  
12 Theresa that you have to put an exact date, a hard  
13 date.

14 CHAIRPERSON BAILEY: Can we do -- treat it  
15 the same then as we did previously, and simply  
16 bracket it and leave it blank, essentially until we  
17 have a better handle?

18 MR. SMITH: So you just want to put  
19 bracket, "hard date," all caps, boldface, so we  
20 don't miss it.

21 But I think you can take out the "unless  
22 later date is cited," because you wouldn't do that.

23 COMMISSIONER BALCH: Well, there are the  
24 three sections on the grandfather tanks where we  
25 have a date of June 16th.

1 MR. SMITH: But those -- that's not your  
2 effective date for your rule, right?

3 COMMISSIONER BALCH: That's true.

4 COMMISSIONER BLOOM: Well, the current  
5 language includes that, "unless a later date is  
6 cited at the end of a section."

7 MR. SMITH: Oh, at the end of a section.  
8 In case you would want to make -- sure, that's  
9 right. In case you would want to make one of the  
10 particular sections effective at a later time.

11 COMMISSIONER BALCH: Such as the  
12 grandfather tanks.

13 MR. SMITH: Well, you are not really  
14 changing the effective date on that. What you -- I  
15 mean, I think what this is -- what this is  
16 contemplating is you have to do X, and then you say  
17 this section is effective on Y date.

18 CHAIRPERSON BAILEY: The phrase is "to  
19 protect public health."

20 COMMISSIONER BLOOM: You're right. For  
21 variances, we do "fresh water, public health, and  
22 the environment." Okay. That will work.

23 CHAIRPERSON BAILEY: Yes.

24 COMMISSIONER BLOOM: Definitions.

25 MR. SMITH: "Public health, welfare." Is

1 "welfare" right?

2 CHAIRPERSON BAILEY: Yes, public health.

3 MR. SMITH: "Fresh water." Isn't that  
4 what you said?

5 COMMISSIONER BALCH: That's what we have  
6 in the variance as an exceptions language later on.  
7 This is just in the objective.

8 MR. SMITH: Of the rules?

9 CHAIRPERSON BAILEY: Welfare doesn't  
10 belong there, does it?

11 MR. SMITH: No, I don't think so. Not  
12 based on what you just said.

13 CHAIRPERSON BAILEY: "To protect public  
14 health and the environment." So "welfare" doesn't  
15 belong in there.

16 MR. SMITH: No.

17 COMMISSIONER BALCH: I'm not quite sure  
18 what it means, anyway.

19 COMMISSIONER BLOOM: The language that you  
20 are looking at, Commissioner Bailey, is that the Oil  
21 and Gas Act?

22 CHAIRPERSON BAILEY: Is the Oil and Gas  
23 Act 70-2-3 -- no, pardon me.

24 7-2-12, "Enumeration of Powers," B 22.

25 Where it would say: "Apart from any authority

1 expressed or implied elsewhere given to or existing  
2 in the Oil Conservation Division by virtue of the  
3 Oil and Gas Act or the statutes of this state, the  
4 division is authorized to make rules, regulations,  
5 and orders for the purposes and with respect to the  
6 subject matter stated in this subsection."

7           And 22 says: "To regulate the disposition  
8 of nondomestic waste resulting from the oilfield  
9 service industry, the transportation of crude oil or  
10 natural gas, the treatment of natural gas or the  
11 refinement of crude oil, to protect public health  
12 and the environment, including administering the  
13 Water Quality Act."

14           Well, maybe that's not the correct  
15 citation.

16           MR. SMITH: I can pull that up on Westlaw  
17 here, if you guys want to move to something more  
18 substantial. Let me see what I can find,  
19 Commissioner Bailey.

20           CHAIRPERSON BAILEY: Okay.

21           COMMISSIONER BALCH: Here's a question  
22 that I have of the commission.

23           Many of these things we voted on earlier  
24 or were unanimously agreed on.

25           I guess I don't know if they were

1 individually voted on. Do we need to reaffirm every  
2 paragraph?

3 CHAIRPERSON BAILEY: We might want to  
4 after we finish up for the final, the final-final.  
5 Because what happens, with the information we get --  
6 that we got yesterday and will get with the closing  
7 and findings of fact, may influence our decisions on  
8 some of these individual paragraphs.

9 COMMISSIONER BALCH: Okay. So for our  
10 exercise this afternoon, kind of going through this,  
11 do you think it would be important to specifically  
12 say we all agree on this, we all agree on this?

13 CHAIRPERSON BAILEY: We can reach a  
14 general consensus. But as far as voting, we're not  
15 obligated.

16 COMMISSIONER BLOOM: We will vote a little  
17 bit later.

18 MR. SMITH: I think the important things  
19 for you to vote on now are when you want to make  
20 changes and you don't have a consensus. But if you  
21 have a consensus on everything, I think you can go  
22 through at the end.

23 CHAIRPERSON BAILEY: Right.

24 COMMISSIONER BALCH: I'm all right with  
25 this definition.

1 CHAIRPERSON BAILEY: For below-grade tank?

2 COMMISSIONER BALCH: Yes.

3 CHAIRPERSON BAILEY: I'm okay with it.

4 COMMISSIONER BLOOM: Sure. I think I am  
5 too. Do we want to hyphenate "above-ground storage  
6 tank"?

7 It would be above, hyphen, ground, just  
8 like below-grade.

9 CHAIRPERSON BAILEY: In D, do we have any  
10 concerns about that one?

11 COMMISSIONER BALCH: We spent a long time  
12 talking about continuously -- the definitions of  
13 continuously flowing versus significant. So I think  
14 that unless there's an obvious problem with the  
15 definition, going back to that debate would probably  
16 be a waste of time.

17 COMMISSIONER BLOOM: Right. I think I can  
18 agree with D as it stands now.

19 CHAIRPERSON BAILEY: I can too.

20 COMMISSIONER BLOOM: I just want to note  
21 that I want to put C in red, because we actually  
22 modified closed-loop system, at least to include  
23 workover fluids as well.

24 CHAIRPERSON BAILEY: So you're saying back  
25 up to C, "closed-loop system"?

1                   COMMISSIONER BLOOM: Oh. I just thought  
2 we should put that in red, since it was -- it was a  
3 definition that we modified. Because it used to  
4 read a closed-loop system means a system that uses  
5 above-ground steel tanks for the management of  
6 workover fluids without using below-grade tanks or  
7 pits.

8                   CHAIRPERSON BAILEY: Scroll on down to G,  
9 "Exception."

10                   COMMISSIONER BALCH: That looks right.

11                   CHAIRPERSON BAILEY: I think we all agree  
12 with that.

13                   COMMISSIONER BLOOM: Yes.

14                   CHAIRPERSON BAILEY: I think we all agreed  
15 with H, didn't we?

16                   COMMISSIONER BLOOM: Yes.

17                   COMMISSIONER BALCH: Yeah.

18                   Green. Was that from -- let me look at  
19 it. You're right. Groundwater is the definition  
20 submitted by IPANM but not by NMOGA.

21                   COMMISSIONER BLOOM: Does anyone recall  
22 testimony?

23                   COMMISSIONER BALCH: I'm not even sure if  
24 we even address groundwater anywhere in the rule.

25                   COMMISSIONER BLOOM: Distance to

1 groundwater.

2 CHAIRPERSON BAILEY: Let's look at the  
3 current definition. I think we already have a  
4 current definition for groundwater.

5 COMMISSIONER BLOOM: I actually don't  
6 believe we have one.

7 COMMISSIONER BALCH: I don't think there  
8 is one. There's not one in NMOGA, which is the most  
9 recent version, plus their modification.

10 CHAIRPERSON BAILEY: Of Rule 17. But in  
11 Rule 2, we already have the definition for  
12 groundwater. And that says: "Groundwater means  
13 interstitial water that occurs in saturated earth  
14 material and is capable of entering a well in  
15 sufficient amounts to be used as a water supply."

16 That is a current definition of  
17 groundwater.

18 COMMISSIONER BALCH: Okay. So maybe we  
19 ought to just change this to that.

20 CHAIRPERSON BAILEY: Why don't we just  
21 delete this, because we don't need to have it.

22 COMMISSIONER BALCH: It says the same  
23 thing. It does say exactly the same thing except  
24 for a few different connecting words. That's about  
25 it.

1 CHAIRPERSON BAILEY: Well, if we change it  
2 here we are creating a discrepancy, really.

3 COMMISSIONER BALCH: That's why I say if  
4 we need to leave it, I would change it to that.

5 CHAIRPERSON BAILEY: But let's go ahead  
6 and delete it, because we don't need to create any  
7 kind of potential discrepancy.

8 COMMISSIONER BLOOM: We should put that in  
9 red.

10 COMMISSIONER BALCH: What are we putting  
11 in red? Things we have changed or things that was  
12 proposed to be changed?

13 MS. DURAN-SAENZ: Proposed to be changed.

14 COMMISSIONER BALCH: That was proposed to  
15 be added by NMOGA?

16 MS. DURAN-SAENZ: Uh-huh.

17 CHAIRPERSON BAILEY: No, by IPANM, not by  
18 NMOGA.

19 COMMISSIONER BALCH: Well, it's in blue  
20 here.

21 CHAIRPERSON BAILEY: Well, yes. NMOGA  
22 does have it a little bit out of order. So, yes.

23 COMMISSIONER BLOOM: Okay.

24 COMMISSIONER BALCH: Okay.

25 COMMISSIONER BLOOM: "Measurable" is a new

1 definition, correct? We accept that.

2 COMMISSIONER BALCH: Yes, it is.

3 MR. SMITH: You're leaving low chloride  
4 fluids discussion until after you get...

5 CHAIRPERSON BAILEY: Yes.

6 COMMISSIONER BALCH: I'm okay with that  
7 definition.

8 CHAIRPERSON BAILEY: For multi-well?

9 COMMISSIONER BALCH: No, for measurable.

10 CHAIRPERSON BAILEY: Yes, I am too.

11 COMMISSIONER BLOOM: I am fine with that.

12 MR. SMITH: Do you, on K, want to put  
13 measurable what?

14 CHAIRPERSON BAILEY: Measurable oil?  
15 Because the definition says "means a layer of oil  
16 greater than..."

17 MR. SMITH: But as -- is the word  
18 "measurable," are you sure, used only in the context  
19 of where this would be appropriate?

20 CHAIRPERSON BAILEY: Uh-huh.

21 MR. SMITH: Sheen? It's is not used  
22 anyplace else?

23 COMMISSIONER BALCH: Well, it's used in  
24 the definition of "visible sheen," but that's what  
25 this is referring to, greater than that.

1                   And we put in the word "discernible"  
2                   yesterday, because we had measurable timing in the  
3                   definition of measurable.

4                   CHAIRPERSON BAILEY: Are we okay with the  
5                   definition for multi-well fluid management pit?

6                   COMMISSIONER BLOOM: That last sentence is  
7                   something that industry wanted because they felt  
8                   that the inspector could come out and say that a  
9                   pond filled with water could be seen as a temporary  
10                  pit or something like that, or fresh water -- oh, it  
11                  was fresh water ponds or something like that, that  
12                  could be out on a lease for the water for the job.

13                  COMMISSIONER BALCH: Or maybe for cattle  
14                  or something else.

15                  CHAIRPERSON BAILEY: Stock ponds or  
16                  something.

17                  COMMISSIONER BALCH: Yeah. I think that's  
18                  an important distinction.

19                  So I'm all right with that definition in  
20                  L.

21                  COMMISSIONER BLOOM: Yes, I'm fine with  
22                  that.

23                  CHAIRPERSON BAILEY: What are you looking  
24                  at?

25                  MR. SMITH: Well, I'm looking at

1 measurable again. There is, I think, a grammatical  
2 issue here. And that is whether the clause "that is  
3 discernible by" modifies "layer of oil" or modifies  
4 "sheen." And you might want to clarify it.

5 COMMISSIONER BALCH: We could just take  
6 out the "greater than a sheen," because we have a  
7 definition of visible sheen later on.

8 COMMISSIONER BLOOM: We use visible to  
9 say...

10 COMMISSIONER BALCH: Well --

11 CHAIRPERSON BAILEY: "Visible" means a  
12 sheen on the pit. So you know, we could --

13 COMMISSIONER BALCH: "Greater than a  
14 sheen" is kind of an arbitrary statement. You won't  
15 know it's greater than a sheen unless you measure  
16 it.

17 Would that resolve your issue?

18 MR. SMITH: Well, that was always my  
19 issue, that as a technical matter you're happy with  
20 it.

21 Then the other issue that I would have is  
22 that I don't know that it is the layer of oil that  
23 is discernible. You might want to put "means a  
24 layer of oil, the amount of which is discernible by  
25 color cutting or other acceptable methods."

1 COMMISSIONER BALCH: What about "a  
2 discernible layer of oil"?

3 MR. SMITH: "The thickness of which or the  
4 amount which is discernible by." I mean it's a  
5 layer, so you are really talking about either the  
6 color cutting or other acceptable method is  
7 measuring what, the layer?

8 Okay. So that would be a matter of  
9 thickness, would it not?

10 COMMISSIONER BALCH: It measures the  
11 thickness of the layer, yes.

12 MR. SMITH: Okay. "Means a layer of oil,  
13 the thickness of which is discernible by color  
14 cutting or other acceptable method."

15 Now does that assume, then, that a  
16 sheen -- the thickness of a sheen may not be  
17 measured?

18 COMMISSIONER BALCH: Yes.

19 MR. SMITH: Okay.

20 COMMISSIONER BALCH: Well, anything is  
21 technically measurable.

22 MR. SMITH: Well, that's what I was  
23 thinking.

24 COMMISSIONER BALCH: But it could be a  
25 molecule thick and you would not be able to test it

1 in the field.

2 MR. SMITH: Okay.

3 COMMISSIONER BLOOM: I believe that works.

4 MR. SMITH: If that works, then you want  
5 to put a comma, I think, after the word "oil,"  
6 Theresa.

7 CHAIRPERSON BAILEY: And we agreed to  
8 accept the definition there for multi-well fluid  
9 management pit?

10 COMMISSIONER BALCH: Yes.

11 Do either of you think that there's a  
12 likelihood that we will have a definition of  
13 on-site? I know we're not going to come up with it  
14 today. But...

15 COMMISSIONER BLOOM: I'm not -- I'm not  
16 sure yet.

17 CHAIRPERSON BAILEY: Why don't we just  
18 hold the place.

19 COMMISSIONER BALCH: Well, I was thinking  
20 we should give it a letter M, "On-site."

21 CHAIRPERSON BAILEY: Then the next  
22 question goes to N.

23 COMMISSIONER BALCH: "Permanent pit" was  
24 modified. They have in addition to that that we did  
25 not accept.

1 Does that mean we have to highlight it?

2 MS. DURAN-SAENZ: No.

3 COMMISSIONER BLOOM: We -- they asked that  
4 "Restore" be deleted, but we kept it.

5 CHAIRPERSON BAILEY: Yes.

6 COMMISSIONER BLOOM: We are good with  
7 that.

8 CHAIRPERSON BAILEY: And they asked that  
9 "playa lake" be inserted, but we already had a  
10 definition that we didn't want to create any  
11 problems with.

12 COMMISSIONER BALCH: Well, "Significant  
13 Watercourse" we did modify, so that should be in  
14 red.

15 CHAIRPERSON BAILEY: And we accepted their  
16 definition that included "with a defined bed and  
17 bank."

18 I think we are good with the definition  
19 for "Significant Watercourse," aren't we?

20 COMMISSIONER BLOOM: Yes.

21 COMMISSIONER BALCH: Yes.

22 CHAIRPERSON BAILEY: I am.

23 COMMISSIONER BALCH: I'm also all right  
24 with the definition of "Sump."

25 CHAIRPERSON BAILEY: I am too.

1                   COMMISSIONER BLOOM: Yes, I'm fine with  
2 that.

3                   COMMISSIONER BALCH: And we just talked  
4 about temporary pits before lunch.

5                   CHAIRPERSON BAILEY: And we made a small  
6 change.

7                   COMMISSIONER BALCH: I believe that's  
8 right.

9                   CHAIRPERSON BAILEY: Releases the drilling  
10 of the workover rig from the first well using the  
11 pit.

12                   COMMISSIONER BLOOM: Essentially, the  
13 temporary pit will be open for six months from the  
14 time it takes to -- to drill the first well, or to  
15 complete the workover.

16                   COMMISSIONER BALCH: From starting the  
17 first well the 6-month time starts.

18                   COMMISSIONER BLOOM: Yes.

19                   CHAIRPERSON BAILEY: Okay. We are all  
20 good with that, then.

21                   There was one more underlined word,  
22 "workover."

23                   CHAIRPERSON BAILEY: I'm okay with  
24 definition S for "Variance."

25                   COMMISSIONER BLOOM: Yes.

1                   COMMISSIONER BALCH: Yes. But I think  
2 that there was no definition of variance before, so  
3 the whole thing is red.

4                   COMMISSIONER BLOOM: I believe we agreed  
5 on "Visible," correct?

6                   CHAIRPERSON BAILEY: Yes.

7                   COMMISSIONER BALCH: Do we want to say  
8 "sheen" on the liquid surface that could not be  
9 measured, or is that important to you?

10                  MR. SMITH: I'm sorry. I was looking up  
11 the law here. What did you ask?

12                  COMMISSIONER BALCH: I'm talking about  
13 your sheen, the measurable sheen.

14                  Of course, measurable --

15                  MR. SMITH: Where else does the word  
16 "visible" appear?

17                  COMMISSIONER BALCH: I think it does occur  
18 later on in --

19                  CHAIRPERSON BAILEY: The operations  
20 section.

21                  COMMISSIONER BALCH: -- operations.

22                  The main thing that I think is important  
23 is that we have measurable is something that can be  
24 measured; and visible is something that you can see  
25 but you can't measure.

1 MR. SMITH: Well, do you want to say "any  
2 sheen on the pit liquid surface that is not  
3 measurable"?

4 COMMISSIONER BALCH: I think that would be  
5 appropriate.

6 COMMISSIONER BLOOM: What should that  
7 addition be again? I'm sorry.

8 MR. SMITH: You would qualify that by  
9 saying any sheen on the pit liquid surface that is  
10 not measurable.

11 COMMISSIONER BALCH: I don't know. Maybe  
12 we ought to look and see. Because you can see a  
13 measurable sheen. You can see a measurable layer of  
14 oil. You can see when it's not measurable. You  
15 wouldn't know it's only a visible sheen unless you  
16 try and measure it.

17 CHAIRPERSON BAILEY: Visible is the larger  
18 category. Measurable is a subset of visible.

19 MR. SMITH: Well, then, you could put --

20 COMMISSIONER BALCH: I think it's all  
21 right the way it is, actually.

22 CHAIRPERSON BAILEY: Yes, I agree.

23 MR. SMITH: Well, but are you -- you have  
24 distinguished, have you not, at least in your minds,  
25 the distinction between a sheen and oil that is

1 measurable?

2 COMMISSIONER BALCH: Yeah. But measurable  
3 is a subset of visible. I mean, we already took  
4 care of that in the definition of measurable.

5 MR. SMITH: Are there sheens that are  
6 measurable?

7 COMMISSIONER BALCH: Yes. Every sheen  
8 is -- well, all sheens --

9 CHAIRPERSON BAILEY: Sheens are not  
10 normally measurable.

11 MR. SMITH: Okay. Then if that's the case  
12 you have limited your definition of visible to  
13 amounts that are not normally measurable. And if  
14 you want visible to include both categories...

15 COMMISSIONER BALCH: No, I think we want  
16 to use...

17 COMMISSIONER BLOOM: A measurable sheen is  
18 always visible.

19 MR. SMITH: Well, but -- no. Commissioner  
20 Bailey just said that a sheen is not normally  
21 measurable.

22 COMMISSIONER BALCH: We don't have  
23 sheen --

24 COMMISSIONER BLOOM: That's why it's  
25 visible.

1                   COMMISSIONER BALCH: We don't have  
2 sheen -- we have measurable layer of oil under the  
3 definition of measurable. So where we are using  
4 visible, if I recall correctly, is it triggers a  
5 response. That response is to go measure it, right?

6                   MR. SMITH: I mean, if you want to include  
7 both you could say "any sheen or measurable amount  
8 of oil," and then you have both of them included in  
9 visible.

10                  COMMISSIONER BALCH: Well, you already  
11 have oil on the surface of the pit in this  
12 definition.

13                  MR. SMITH: Do you want Theresa to search  
14 for the word "visible" and see how you are using it?

15                  CHAIRPERSON BAILEY: Sure, because we make  
16 a very clear distinction.

17                  COMMISSIONER BALCH: It's not going to be  
18 in this section.

19                  There you go. "Remove any visible layer."

20                  CHAIRPERSON BAILEY: Even if it's not  
21 measurable by color cutting we want it removed.

22                  COMMISSIONER BLOOM: Yes.

23                  COMMISSIONER BALCH: It looks to be the  
24 case.

25                  MR. SMITH: Well, then, I would think that

1 you would want to put visible means an amount of  
2 oil, whether measurable or a sheen.

3 COMMISSIONER BALCH: I still think the  
4 definition is all right.

5 MR. SMITH: Well, if a sheen is not  
6 normally measurable, then you are excluding a  
7 measurable amount here from visible.

8 COMMISSIONER BALCH: Right. But you are  
9 talking about oil on the surface of the pit, which  
10 is what we are concerned about.

11 MR. SMITH: But you have limited the oil  
12 on the surface of a pit to a sheen. Under this  
13 definition the only thing that is visible is a  
14 sheen.

15 COMMISSIONER BALCH: Any sheen or  
16 measurable oil on pit liquid surface?

17 CHAIRPERSON BAILEY: Means any oil  
18 measurable or a sheen on the pit liquid surface.

19 COMMISSIONER BLOOM: Say that one more  
20 time, how would it read.

21 CHAIRPERSON BAILEY: Visible, when used  
22 with respect to oil on the surface of the pit, means  
23 any amount of oil, whether measurable or a sheen, on  
24 the pit liquid surface.

25 COMMISSIONER BALCH: That will work.

1           COMMISSIONER BLOOM: "Or a sheen"? That  
2 would certainly work.

3           CHAIRPERSON BAILEY: Okay.

4           COMMISSIONER BALCH: All right.

5           CHAIRPERSON BAILEY: So let's go ahead and  
6 accept "or registration" in that title for 17.8.

7           Okay. I believe we agreed to the deletion  
8 of the original paragraph B, so that closed-loop  
9 systems were no longer through a permit or  
10 registration system; but, rather, a notification on  
11 one of our forms.

12           COMMISSIONER BALCH: Yes. I mean, a  
13 closed-loop system doesn't require a permit or  
14 notification, just notification.

15           CHAIRPERSON BAILEY: Yes. That's what I  
16 remembered we agreed to. So we can go ahead and  
17 delete that --

18           COMMISSIONER BALCH: Strikeout?

19           CHAIRPERSON BAILEY: Strikeout, yes.

20           COMMISSIONER BALCH: So this would become  
21 B.

22           And the reason we are striking  
23 "below-grade tanks, closed-loop system," is because  
24 below-grade tanks are now registered and closed-loop  
25 systems are now noticed. So I believe B is fine.

1 CHAIRPERSON BAILEY: Theresa, go ahead and  
2 delete "below-grade tanks and closed-loop systems."  
3 Okay. And the comma after "pits" could be deleted  
4 also.

5 I think C is fine.

6 COMMISSIONER BLOOM: Yes, C is fine.

7 COMMISSIONER BALCH: Do we have a time  
8 line associated with registration anywhere?

9 CHAIRPERSON BAILEY: In the original one  
10 we probably do.

11 COMMISSIONER BLOOM: You mean they had to  
12 all be permitted by a certain date?

13 CHAIRPERSON BAILEY: Uh-huh. But we don't  
14 have a registration date, do we?

15 COMMISSIONER BLOOM: No.

16 COMMISSIONER BALCH: We may have addressed  
17 it in this section on...

18 COMMISSIONER BLOOM: Should it read  
19 something along the lines that "the operator shall  
20 file a single registration for all existing and new  
21 below-grade tanks"?

22 CHAIRPERSON BAILEY: No, because that  
23 opens the door to every single one that's already  
24 been permitted, saying it has to be registered. We  
25 don't want to do that.

1 COMMISSIONER BLOOM: No.

2 COMMISSIONER BALCH: I think the reason we  
3 don't need to have a date is because the other cases  
4 that I'm thinking about are grandfathered and they  
5 don't need to.

6 CHAIRPERSON BAILEY: They all had to be  
7 permitted.

8 COMMISSIONER BALCH: Right.

9 COMMISSIONER BLOOM: So a lot of them  
10 never were permitted, correct?

11 COMMISSIONER BALCH: Well, there is a  
12 backlog of several thousand.

13 CHAIRPERSON BAILEY: 10,000.

14 COMMISSIONER BALCH: Okay. I was  
15 underestimating. Even a grandfather tank, though,  
16 would have to be registered. I think that's right.

17 COMMISSIONER BLOOM: So if one wasn't  
18 permitted it would have to be registered. I think  
19 we've got an extra line --

20 COMMISSIONER BALCH: Even if it's not  
21 permitted you have to go to registration.

22 CHAIRPERSON BAILEY: So you are asking us  
23 to register all below-grade tanks that have already  
24 been permitted?

25 COMMISSIONER BALCH: I have no idea.

1 CHAIRPERSON BAILEY: No, you don't want to  
2 do that.

3 COMMISSIONER BALCH: I don't know what I'm  
4 asking. I want to make sure.

5 CHAIRPERSON BAILEY: Okay.

6 COMMISSIONER BALCH: Because right here we  
7 are saying all below-grade tanks must be  
8 registered --

9 CHAIRPERSON BAILEY: Okay.

10 COMMISSIONER BALCH: -- with the  
11 appropriate division district office.

12 CHAIRPERSON BAILEY: All below-grade tanks  
13 installed after the effective date of this rule must  
14 be registered with the appropriate district office.

15 COMMISSIONER BLOOM: What about ones that  
16 were installed already but were never permitted?

17 CHAIRPERSON BAILEY: They won't be there  
18 unless they've been permitted, because that  
19 permitting requirement has been there since 2008.

20 COMMISSIONER BALCH: Okay. So the --

21 CHAIRPERSON BAILEY: And we had other  
22 permitting even before this.

23 COMMISSIONER BALCH: So the tanks that  
24 were permitted between 2008 and this rule will  
25 remain permitted?

1 CHAIRPERSON BAILEY: Yes.

2 COMMISSIONER BALCH: Okay.

3 COMMISSIONER BLOOM: But I thought there  
4 was a backlog of...

5 COMMISSIONER BALCH: Well, those are  
6 permit applications.

7 COMMISSIONER BLOOM: Okay. So they  
8 haven't been permitted. They are just...

9 COMMISSIONER BALCH: Some are, some --  
10 most aren't.

11 COMMISSIONER BLOOM: Right.

12 CHAIRPERSON BAILEY: They were sent in for  
13 permitting.

14 COMMISSIONER BLOOM: But they haven't been  
15 permitted because of the backlog. So...

16 COMMISSIONER BALCH: Now the registration  
17 is not necessarily as gigantic of a burden as the  
18 permitting. I mean, I would assume there's a list  
19 that has been --

20 CHAIRPERSON BAILEY: We are talking tens  
21 of thousands of below-grade tanks.

22 COMMISSIONER BALCH: But they're still on  
23 a list that they are sending to the district office.

24 CHAIRPERSON BAILEY: And they have to each  
25 be filed in every well file or every facility file

1 and they have to be processed.

2 COMMISSIONER BALCH: This is different  
3 than the list, is the registration?

4 CHAIRPERSON BAILEY: Yes.

5 COMMISSIONER BALCH: Okay. So the  
6 question is do you want to make it retroactive to  
7 2008 or have it effective from this rule?

8 CHAIRPERSON BAILEY: From this rule  
9 forward.

10 COMMISSIONER BALCH: I think that's  
11 probably appropriate.

12 COMMISSIONER BLOOM: Okay.

13 COMMISSIONER BALCH: Effectively, it  
14 grandfathers that backlog and the backlog goes away.

15 CHAIRPERSON BAILEY: Great for performance  
16 measures.

17 COMMISSIONER BALCH: Okay.

18 CHAIRPERSON BAILEY: So we shall insert  
19 the words "all below-grade tanks installed after the  
20 effective date of this rule must be registered."

21 COMMISSIONER BLOOM: In this instance we  
22 are okay to have "after the effective date"?

23 COMMISSIONER BALCH: I think so.

24 COMMISSIONER BLOOM: Mr. Smith?

25 COMMISSIONER BALCH: We can say "after the

1 effective date of this rule"?

2 MR. SMITH: Sure.

3 COMMISSIONER BALCH: Okay. Since this is  
4 going to be up on appeal it would be, obviously,  
5 this rule, not something from 1982.

6 MR. SMITH: You know, I don't know, now  
7 that you say that, if we repeal and replace whether  
8 you have a new effective date for the rule or not.

9 Do you want to do the hard date thing here  
10 again?

11 CHAIRPERSON BAILEY: Okay.

12 MR. SMITH: I think that's the safest  
13 thing to do all the way around.

14 COMMISSIONER BALCH: So "installed after,"  
15 bracket, "hard date." We could leave "installed  
16 after" in this bracket, after that, "hard date."

17 All right. I think that's good now.

18 CHAIRPERSON BAILEY: We are good with  
19 paragraph D, aren't we?

20 COMMISSIONER BALCH: Yes.

21 CHAIRPERSON BAILEY: We are good with "and  
22 registration"?

23 COMMISSIONER BALCH: "And registration."

24 All right. So in this registration  
25 process -- I'm sure we discussed it before. Here,

1 we are saying that they are going to use the form  
2 C-144 to register.

3 CHAIRPERSON BAILEY: Uh-huh.

4 COMMISSIONER BALCH: It's not an  
5 interactive process? We just send in a C-144?

6 CHAIRPERSON BAILEY: Which has to be  
7 approved.

8 COMMISSIONER BALCH: Okay.

9 CHAIRPERSON BAILEY: No. The permit has  
10 to be approved. The registration wouldn't have to  
11 be.

12 COMMISSIONER BALCH: Okay. Right. So --

13 CHAIRPERSON BAILEY: That's what this  
14 paragraph is allowing.

15 COMMISSIONER BALCH: Now when we say "the  
16 appropriate form C-144," does that apply to the  
17 C-144 for tank registration?

18 CHAIRPERSON BAILEY: A specific form.

19 COMMISSIONER BALCH: Okay. That's what I  
20 thought, but I wanted to be sure. Okay.

21 CHAIRPERSON BAILEY: So I'm good with  
22 paragraph A.

23 COMMISSIONER BLOOM: It works for me.

24 COMMISSIONER BALCH: I think that's fine.

25 CHAIRPERSON BAILEY: We are -- scroll on

1 down to "Temporary Pits."

2 Okay. We accepted that this morning.

3 COMMISSIONER BALCH: Yes.

4 CHAIRPERSON BAILEY: So scroll on down.

5 COMMISSIONER BALCH: That is true. All of  
6 this has been accepted.

7 COMMISSIONER BLOOM: Go down to (4).

8 CHAIRPERSON BAILEY: And we agreed to  
9 that.

10 Okay. All the changes in paragraph (2)  
11 there I'm in favor of.

12 COMMISSIONER BALCH: Yes.

13 COMMISSIONER BLOOM: That works for me.

14 CHAIRPERSON BAILEY: Because we still have  
15 this question about low chloride fluid, I suggest  
16 that we just skip this section having to do with  
17 setbacks.

18 COMMISSIONER BALCH: Yes.

19 COMMISSIONER BLOOM: That's okay.

20 CHAIRPERSON BAILEY: So we would scroll on  
21 down to --

22 COMMISSIONER BALCH: I do believe we have  
23 actually voted on most of those already.

24 CHAIRPERSON BAILEY: But it's still open  
25 for...

1 COMMISSIONER BALCH: Of course. All  
2 right.

3 COMMISSIONER BLOOM: If we go down to  
4 "Design and Construction," there's the addition on  
5 page 11.

6 COMMISSIONER BALCH: And a deletion.

7 COMMISSIONER BLOOM: We changed -- it used  
8 to be "prevents or prohibits," right?

9 COMMISSIONER BALCH: I think that's a  
10 reasonable change.

11 COMMISSIONER BLOOM: We can accept  
12 "deters" and a make that red.

13 COMMISSIONER BALCH: We can't prevent --

14 COMMISSIONER BLOOM: No.

15 COMMISSIONER BALCH: All right.

16 COMMISSIONER BLOOM: E.

17 COMMISSIONER BALCH: That is fine.

18 CHAIRPERSON BAILEY: We agreed with that.

19 COMMISSIONER BLOOM: Yes.

20 CHAIRPERSON BAILEY: Paragraph (7), we  
21 agreed that that made sense to accept that change.

22 COMMISSIONER BLOOM: Yes.

23 COMMISSIONER BALCH: Yes.

24 COMMISSIONER BLOOM: Where is the next  
25 one? On page 14?

1 CHAIRPERSON BAILEY: I think so.

2 COMMISSIONER BALCH: "Drying Pads."

3 CHAIRPERSON BAILEY: We accepted that.

4 The next one is on page 15.

5 COMMISSIONER BALCH: We talked about (5),  
6 (6), and (7) this morning.

7 CHAIRPERSON BAILEY: Uh-huh.

8 COMMISSIONER BALCH: And I think we ironed  
9 out the issues with those three paragraphs at that  
10 time.

11 CHAIRPERSON BAILEY: Yes, we did.

12 COMMISSIONER BALCH: So I think (5), (6),  
13 and (7) are all right.

14 COMMISSIONER BLOOM: I think it's  
15 important to note there that that was where we saw  
16 some additional language from the '09 amendments.

17 I think it is important to note that we  
18 saw some -- we had some issues there when we found  
19 that we hadn't considered the 2009 modifications to  
20 the...

21 COMMISSIONER BALCH: What was the 2009?  
22 Do you remember what the modification was for this?

23 COMMISSIONER BLOOM: It was -- they were  
24 just small changes throughout, and I ran them all  
25 down. And they --

1           COMMISSIONER BALCH: Well, we could  
2 probably deal with that particular change right now  
3 and make sure that it's not going to significantly  
4 alter anything.

5           COMMISSIONER BLOOM: I ran them all down  
6 and there was a potential impact.

7           COMMISSIONER BALCH: In Exhibit 20 from  
8 NMOGA, I guess I'm not clear. What was the added  
9 2009 language? Did they specify that a certain way?

10          CHAIRPERSON BAILEY: Page 18 indicates the  
11          strikeout.

12          COMMISSIONER BALCH: Okay.

13          CHAIRPERSON BAILEY: And I think if we  
14 look at that we can see what the changes were.

15          COMMISSIONER BALCH: Okay.

16          CHAIRPERSON BAILEY: Because Exhibit 20 is  
17 the latest -- is based on the latest.

18          COMMISSIONER BALCH: Based on the '09  
19 modification?

20          CHAIRPERSON BAILEY: Right.

21          COMMISSIONER BALCH: So paragraph (6) --  
22 (4), (5), (6), and (7), the reason they had not been  
23 included in paragraph (6) is because they had struck  
24 out paragraph (6).

25                 Now, we maintained paragraph (6) with

1 maybe some tenets. So the reason I -- that  
2 strikeout, I think, is appropriate. Well...

3 COMMISSIONER BLOOM: So NMOGA wanted that  
4 deleted. But -- let me make sure. I'm sorry.

5 CHAIRPERSON BAILEY: They struck out  
6 paragraph (6) on page 18. That is equivalent to our  
7 paragraph (6) having to do with the single-walled  
8 below-grade tank, where any portion is below ground  
9 and not visible. So we have the equivalent  
10 paragraph.

11 COMMISSIONER BALCH: I think it's not -- I  
12 don't think it's an important issue. Basically,  
13 NMOGA asked us to strike this paragraph (6). We  
14 decided to leave it in.

15 COMMISSIONER BLOOM: Correct.

16 CHAIRPERSON BAILEY: What we did delete  
17 was the last sentence of the struck-out paragraph  
18 (6) that reads: "The operator shall comply with the  
19 operational requirements of 19.15.17.12," in that.  
20 And I think that was done because if we put it there  
21 in Section 12 they are going to be required to  
22 comply with it --

23 COMMISSIONER BALCH: The same reason we  
24 took it out of (5) -- or didn't put it in (5) and  
25 left it out of (7). So I think it's a nonissue, the

1 difference.

2 So I think I'm okay with (5), (6), and  
3 (7), and if there's no issue with the modifications  
4 for 2009.

5 CHAIRPERSON BAILEY: Okay. We can accept  
6 all of those changes, then.

7 Do you-all want a break before we go into  
8 the next part?

9 (Discussion off the record.)

10 CHAIRPERSON BAILEY: Let's look at  
11 multi-well fluid management pits.

12 COMMISSIONER BLOOM: J is fine?

13 COMMISSIONER BALCH: I think so.

14 I think (1) is fine.

15 CHAIRPERSON BAILEY: Before we go,  
16 remember I made that error on the difference between  
17 geotextile and geomembrane?

18 COMMISSIONER BALCH: Right.

19 CHAIRPERSON BAILEY: So let's make sure  
20 that that error is not carried forward here.

21 COMMISSIONER BALCH: We have geotextile.

22 CHAIRPERSON BAILEY: Yes, I think I am  
23 good with paragraph J (1) and (2).

24 COMMISSIONER BALCH: That's fine.

25 COMMISSIONER BLOOM: I'm fine with (1) and

1 (2) as well.

2 CHAIRPERSON BAILEY: And there's our  
3 phrase, "protection to fresh water, public health,  
4 and the environment." And that's the phrase that  
5 should be reflected in --

6 COMMISSIONER BALCH: In the --

7 CHAIRPERSON BAILEY: On the very first  
8 page of the objective, which was Number 6.

9 COMMISSIONER BALCH: This is what we used  
10 throughout the document from here on.

11 CHAIRPERSON BAILEY: Yes. "Fresh water,  
12 public health, and the environment."

13 COMMISSIONER BALCH: So now you just want  
14 to grab "fresh water, public health, and the  
15 environment."

16 CHAIRPERSON BAILEY: And copy it.

17 COMMISSIONER BALCH: To that page.

18 CHAIRPERSON BAILEY: The first page, page  
19 1.

20 COMMISSIONER BLOOM: Replace that.

21 COMMISSIONER BALCH: Now we're consistent.

22 MR. SMITH: Which is a good thing. And I  
23 think public health and the environment, where you  
24 cited it, I think that that's right.

25 COMMISSIONER BALCH: We had an extensive

1 debate about how this phrase should be worded.

2 CHAIRPERSON BAILEY: Right.

3 COMMISSIONER BALCH: So we went back to  
4 the relevant rules. We had you spend a whole lunch  
5 hour looking up -- looking at the -- I think it was  
6 the Oil and Gas Act.

7 CHAIRPERSON BAILEY: Uh-huh.

8 COMMISSIONER BALCH: So if you don't  
9 remember that, we remember sending you to do that.

10 MR. SMITH: Oh, no. I -- it was a  
11 terrible inconvenience for me.

12 COMMISSIONER BALCH: Okay. So we're on  
13 page 18?

14 CHAIRPERSON BAILEY: 16.

15 COMMISSIONER BLOOM: Scroll down and see  
16 what else there is.

17 COMMISSIONER BALCH: Really, this is just  
18 borrowed language from the permanent pit section.  
19 We have no reason to change any of this.

20 CHAIRPERSON BAILEY: So we can continue on  
21 down.

22 COMMISSIONER BALCH: I just saw that word  
23 up there. We have geomembranes -- geomembranes,  
24 geotextiles, and now there's something --  
25 geosynthetic. I think it might be in (6) or (5).

1           That's borrowed language, I guess. Just  
2     leave it.

3           COMMISSIONER BLOOM: That's actually the  
4     geomembrane they are referring to.

5           COMMISSIONER BALCH: No, I think they are  
6     referring to either the geotextiles or the  
7     geomembranes. Well, no, because geotextile might  
8     not be commonly seen.

9           So this is language that's probably  
10    borrowed directly from the permanent pits.

11          Can you show me the beginning of this  
12    paragraph? This is referring to geomembranes.

13          COMMISSIONER BLOOM: So now there's  
14    geotextile. That's just overlap, I think.

15          COMMISSIONER BALCH: Well, okay.  
16    Geotextile, the way I understand it, is to provide a  
17    smoother surface for the membrane to lie upon. It's  
18    some sort of, I believe, textile or material which  
19    has strength and can also smooth out hard bumps and  
20    surfaces.

21          CHAIRPERSON BAILEY: The term geosynthetic  
22    material is in the original one.

23          COMMISSIONER BALCH: Okay. I don't think  
24    it's something that causes a great deal of  
25    confusion.

1                   CHAIRPERSON BAILEY: And can apply to both  
2 the membrane and the textile.

3                   COMMISSIONER BALCH: Would you seam a  
4 geotextile, or would you just roll it out?

5                   CHAIRPERSON BAILEY: It says the purpose  
6 is simply to smooth over the bumps and the roots and  
7 whatever. It would not necessarily be seamed.

8                   COMMISSIONER BALCH: Well, that is why I'm  
9 wondering if this should really say, instead of  
10 geosynthetic material, say geomembrane, which should  
11 be seamed. Whereas -- I mean, I am familiar with  
12 the geotextile, from laying it out on my yard and  
13 putting rocks on top of it.

14                   Is it possible for us to change this to  
15 what it means?

16                   CHAIRPERSON BAILEY: But why not leave it,  
17 in case there is a site-specific instance where it  
18 is necessary because they've got 4-foot rolls  
19 instead of 14-foot rolls?

20                   COMMISSIONER BLOOM: Okay. That would be  
21 fine.

22                   CHAIRPERSON BAILEY: I mean, it covers  
23 both.

24                   COMMISSIONER BLOOM: Yeah.

25                   CHAIRPERSON BAILEY: It is an inclusive

1 term.

2 COMMISSIONER BALCH: You could end up with  
3 a geotextile that you roll out and there's no seam  
4 protocol for it.

5 CHAIRPERSON BAILEY: And that's not  
6 necessary. It says shall ensure field seams into --  
7 are thermally seamed.

8 COMMISSIONER BALCH: I guess I read that  
9 as saying a geotextile would have to be thermally  
10 seamed as well.

11 COMMISSIONER BLOOM: I think we should  
12 just leave it as is. We didn't hear any testimony  
13 that it would give us any trouble.

14 COMMISSIONER BALCH: That's fine.

15 MR. SMITH: I do think that, for clarity,  
16 you might want to put a comma after the word  
17 "across" in the first sentence.

18 COMMISSIONER BALCH: That probably would  
19 have to go back to the permanent pit definition or  
20 two pages earlier.

21 CHAIRPERSON BAILEY: Because we have that  
22 phrase in multiple places.

23 MR. SMITH: Oh, you do?

24 CHAIRPERSON BAILEY: Yes, we do.

25 MR. SMITH: I think that -- I mean, the

1 intent there is to ensure that the seams go up and  
2 down a slope, right? So I think in order to make  
3 sure that the up and down doesn't apply to  
4 everything you need to add that comma after the  
5 "across."

6 COMMISSIONER BLOOM: I see that.

7 COMMISSIONER BALCH: Maybe do a quick  
8 search on "up and down." I don't think that shows  
9 up anywhere else.

10 In that third instance up, right there,  
11 can you say "a slope" instead of "the slope"? This  
12 is a slightly different context.

13 MR. SMITH: In this context you are  
14 talking about a particular slope?

15 COMMISSIONER BALCH: Right. So I think  
16 the other ones are all right.

17 CHAIRPERSON BAILEY: Are we on page 16?

18 COMMISSIONER BLOOM: Yes. I believe we  
19 accepted those insertions for (8) and (9).

20 COMMISSIONER BALCH: K is all right.

21 CHAIRPERSON BAILEY: I don't see a  
22 distinction of when pit burial is allowed and when  
23 trench burial is required.

24 COMMISSIONER BALCH: I think it's not a  
25 matter of requirement. I think that you would bury

1 the pit in its existing spot unless there is a  
2 reason to move it off the pad or off of that  
3 particular site. I don't know about burial.

4 COMMISSIONER BLOOM: So the rule, as it  
5 exists now, allows for burying the pit on location,  
6 essentially using the pit to actually bury  
7 everything that was in it, and then you can -- or  
8 you can go elsewhere and dig a trench and put  
9 everything in it.

10 COMMISSIONER BALCH: Right.

11 CHAIRPERSON BAILEY: There are differences  
12 in the current rule for siting criteria; for  
13 instance, burial and on-site trench burial.

14 COMMISSIONER BALCH: So trenches and  
15 on-site burial --

16 CHAIRPERSON BAILEY: There's really no  
17 incentive for an operator, under the way the current  
18 rule is structured, to have a trench burial as  
19 opposed to...

20 COMMISSIONER BALCH: The only case I could  
21 see, and this may come back to our later discussion  
22 of on-site, is where they wanted to remove material  
23 from one well site and bury it with adjacent  
24 material or something like that, or to put all the  
25 material from three wells into one location.

1           So there's a -- there might be an  
2 operational reason to have a trench instead of just  
3 closing the pit.

4           COMMISSIONER BLOOM: And they would -- as  
5 proposed, they would go through Table II.

6           COMMISSIONER BALCH: Well, either one  
7 would fall on Table II, whatever Table II ends up  
8 being.

9           COMMISSIONER BLOOM: Right.

10          CHAIRPERSON BAILEY: This may be a  
11 discussion better suited for Thursday.

12          COMMISSIONER BLOOM: It probably is. And  
13 maybe we could spend some time thinking about it  
14 over the weekend, too --

15          CHAIRPERSON BAILEY: I think we should.

16          COMMISSIONER BLOOM: -- and all the pieces  
17 related.

18          CHAIRPERSON BAILEY: I think we should,  
19 because the siting criteria material for  
20 in-trench -- for a trench burial is where  
21 groundwater is more than 100 feet below the bottom  
22 of the buried waste. So that's a factor in our  
23 considerations Thursday.

24          COMMISSIONER BALCH: Okay. We will skip  
25 this.

1                   COMMISSIONER BLOOM: And again, trench  
2 burial would have to be where groundwater is 100  
3 feet --

4                   CHAIRPERSON BAILEY: Greater than 100  
5 feet.

6                   COMMISSIONER BLOOM: Okay.

7                   CHAIRPERSON BAILEY: Okay. So back to  
8 page 17.

9                   COMMISSIONER BALCH: I think the rest of  
10 that is going to fall into the same category. We  
11 will have to wait.

12                  CHAIRPERSON BAILEY: Well, we agreed on  
13 paragraphs (2) through (10).

14                  COMMISSIONER BLOOM: Yes.

15                  CHAIRPERSON BAILEY: Then we go into  
16 "Operational Requirements."

17                  Let's take a 10-minute break.

18                  (A recess was taken from 2:45 p.m. to 2:56  
19 p.m.)

20                  COMMISSIONER BALCH: Okay. "Operational  
21 Requirements." We had a change at (4).

22                  COMMISSIONER BLOOM: Could I just read  
23 that: "If pit liner's integrity..."

24                  CHAIRPERSON BAILEY: I think A works.

25                  COMMISSIONER BALCH: We had pretty

1 extensive deliberation about --

2 COMMISSIONER BLOOM: Yes.

3 COMMISSIONER BALCH: -- operational

4 values.

5 CHAIRPERSON BAILEY: Yes. We could all

6 except paragraph (4).

7 COMMISSIONER BLOOM: Number (5), "or" is

8 underlined. I don't think it needs to be.

9 COMMISSIONER BALCH: I don't believe so.

10 CHAIRPERSON BAILEY: We had extensive

11 discussion on that. And I believe it was the

12 majority of us that decided to maintain the oil

13 absorbent boom?

14 COMMISSIONER BALCH: I think that we may

15 have actually added the "or other device," then we

16 were all in agreement at that point.

17 CHAIRPERSON BAILEY: Oh, that's right.

18 Okay. We can accept paragraph (8)?

19 COMMISSIONER BALCH: I think the "or other

20 device" may mean other language also.

21 COMMISSIONER BLOOM: That was in there

22 previously. It used to read: "The operator shall

23 install and maintain on-site an oil absorbent boom

24 or other device to contain and remove all oil from

25 the pit surface."

1 COMMISSIONER BALCH: Okay. Well, either  
2 way, I'm happy with that language.

3 COMMISSIONER BLOOM: Okay.

4 COMMISSIONER BALCH: I think it covers the  
5 intent, which is to have some way to control an  
6 unanticipated release.

7 COMMISSIONER BLOOM: Yes.

8 CHAIRPERSON BAILEY: Moving on down to B  
9 (1).

10 I agree with all of those.

11 COMMISSIONER BALCH: There was -- in  
12 paragraph (1), we have that deletion. All right.  
13 That's fine.

14 COMMISSIONER BLOOM: I'm okay with (2).  
15 We gave that considerable attention about the  
16 extenuating circumstances for freeboarding less than  
17 2 feet.

18 CHAIRPERSON BAILEY: Yes.

19 COMMISSIONER BALCH: I think that's fine.

20 CHAIRPERSON BAILEY: We agreed on (4).

21 COMMISSIONER BALCH: (5).

22 CHAIRPERSON BAILEY: Scrolling on down.

23 COMMISSIONER BALCH: (5). There was a  
24 very small change in B (5).

25 CHAIRPERSON BAILEY: And we crafted this

1 language for (3), didn't we?

2 COMMISSIONER BALCH: We did. I think we  
3 did a good job.

4 CHAIRPERSON BAILEY: I do too.

5 And in D (3), I think we worked on that,  
6 and I can accept that.

7 That change in (5) I'm good with.

8 COMMISSIONER BLOOM: Yes, that's fine.

9 COMMISSIONER BALCH: Yes. I think before  
10 they were forced to disclose the tank if they were  
11 having problems.

12 CHAIRPERSON BAILEY: Okay. We have to  
13 hold off on paragraph (6).

14 COMMISSIONER BALCH: So highlight in  
15 yellow paragraph (6), I guess.

16 CHAIRPERSON BAILEY: There was a minor  
17 thing under "Sumps."

18 COMMISSIONER BALCH: F is fine.

19 COMMISSIONER BLOOM: That's fine.

20 CHAIRPERSON BAILEY: All of F is fine with  
21 me.

22 COMMISSIONER BALCH: I am fine with the  
23 rest of that section as well.

24 COMMISSIONER BLOOM: Yes.

25 CHAIRPERSON BAILEY: We can accept that

1 "And Site Reclamation."

2 And I can accept A, the change there for  
3 "application or registration."

4 COMMISSIONER BLOOM: Yes.

5 COMMISSIONER BALCH: Yes.

6 COMMISSIONER BLOOM: (1) looks good.

7 COMMISSIONER BALCH: (1) is fine.

8 CHAIRPERSON BAILEY: Yes.

9 B and B (1) are fine with me.

10 COMMISSIONER BLOOM: I would agree with  
11 that.

12 COMMISSIONER BALCH: I think I'm okay with  
13 (3) except for (a). Actually, (3)(a), (b), and (c)  
14 we will have to wait on.

15 CHAIRPERSON BAILEY: Okay. So B (2) is  
16 all right.

17 COMMISSIONER BALCH: But (3) has to do  
18 with the tables.

19 CHAIRPERSON BAILEY: Right. We have to  
20 wait on (3).

21 COMMISSIONER BALCH: So all of (3). So  
22 yellow highlight it.

23 CHAIRPERSON BAILEY: We really should wait  
24 on all of C, also, because they are all going to be  
25 closely tied with those standards.

1 COMMISSIONER BLOOM: Yes.

2 COMMISSIONER BALCH: We're saving the best  
3 for last.

4 CHAIRPERSON BAILEY: Uh-huh. The most  
5 intense, anyway.

6 COMMISSIONER BALCH: I think we may be  
7 able to deal with "Closure Notice," which is C,  
8 though.

9 CHAIRPERSON BAILEY: Let's go on down to  
10 C, on page 24, then.

11 Oh. C (2), we have already talked about  
12 that, inserting multi-well fluid management pit and  
13 removing paragraph (4). So we are fine with that  
14 portion.

15 COMMISSIONER BLOOM: Yes.

16 COMMISSIONER BALCH: I'm fine with that,  
17 too, and (4).

18 We had extensive discussion about (5),  
19 which is now --

20 CHAIRPERSON BAILEY: Which is now (4),  
21 because we deleted the old paragraph.

22 COMMISSIONER BALCH: Oh, right, right.  
23 Okay.

24 CHAIRPERSON BAILEY: So I'm fine with  
25 what's now (4).

1           COMMISSIONER BALCH: We talked quite a bit  
2 about how this interacted with the Surface Owners'  
3 Protection Act and the permit.

4           CHAIRPERSON BAILEY: So "Closure Report  
5 and Burial Identification," I think we can accept  
6 "and burial identification."

7           COMMISSIONER BALCH: Yes.

8           We also had pretty extensive discussion  
9 about this. I am comfortable with the language in  
10 (2).

11          CHAIRPERSON BAILEY: Right. Because we  
12 needed to have a plat to indicate exactly where that  
13 was located. And that would be -- so we are good  
14 with the language in (2).

15          If we could scroll down.

16          COMMISSIONER BLOOM: Under "Timing"?

17          CHAIRPERSON BAILEY: Uh-huh.

18          COMMISSIONER BALCH: I think E is fine.

19          COMMISSIONER BLOOM: Yes.

20          CHAIRPERSON BAILEY: And we resolved the  
21 conflicts that were potentially there for E (2).

22          COMMISSIONER BALCH: Right. We looked at  
23 (2). And instead of changing (2) we changed the  
24 definition of "temporary."

25          CHAIRPERSON BAILEY: Uh-huh.

1 COMMISSIONER BALCH: So this is fine for  
2 (2).

3 So this puts a firm deadline on it of less  
4 than a year.

5 I'm fine with (4) (a) and (b).

6 CHAIRPERSON BAILEY: I am too.

7 Are you, Commissioner Bloom?

8 COMMISSIONER BLOOM: Yes, I'm fine with  
9 that.

10 COMMISSIONER BALCH: There is very low  
11 risk.

12 COMMISSIONER BLOOM: We have "one-site  
13 equipment," which should be "on-site equipment."

14 COMMISSIONER BALCH: Where?

15 COMMISSIONER BLOOM: (b), on-site.

16 COMMISSIONER BALCH: Just as a -- I will  
17 be the mule here, I guess. We have "on-site"  
18 proposed as a definition, so we need to be careful  
19 about saying "on-site equipment." We need to change  
20 that to something else.

21 COMMISSIONER BLOOM: There's a --

22 COMMISSIONER BALCH: I would just say any  
23 equipment associated with a below-grade tank.

24 CHAIRPERSON BAILEY: And just delete  
25 "on-site"?

1 COMMISSIONER BALCH: Yes.

2 That looks to be good.

3 (5)?

4 COMMISSIONER BLOOM: Yes.

5 CHAIRPERSON BAILEY: Yes, we are good with  
6 (5).

7 COMMISSIONER BLOOM: We can accept "Site  
8 Contouring"?

9 CHAIRPERSON BAILEY: Yes. And it's just a  
10 matter of checking the references in F (1) (a).

11 COMMISSIONER BLOOM: We will accept the  
12 (a), then?

13 CHAIRPERSON BAILEY: Yes.

14 COMMISSIONER BALCH: Yes.

15 CHAIRPERSON BAILEY: I'm okay with the  
16 language in (b).

17 COMMISSIONER BALCH: I am as well.

18 COMMISSIONER BLOOM: Yes.

19 COMMISSIONER BALCH: And (c) as well.

20 CHAIRPERSON BAILEY: Yes.

21 COMMISSIONER BALCH: I think I'm very  
22 happy with all of (5).

23 CHAIRPERSON BAILEY: We had extensive  
24 discussion on this, didn't we?

25 COMMISSIONER BLOOM: Yes.

1 CHAIRPERSON BAILEY: And so I'm also very  
2 happy with (5).

3 COMMISSIONER BALCH: I think that -- yes?

4 COMMISSIONER BLOOM: Yes.

5 COMMISSIONER BALCH: There was a great  
6 deal of testimony, particularly by Dr. Buchanan, on  
7 the best practices and allowing best practice. And  
8 I think we captured that.

9 And (4) -- there's a (4) at the end of  
10 Section (5) there that should actually be renumbered  
11 to (6).

12 CHAIRPERSON BAILEY: Or (d)? Should it be  
13 called (d)?

14 COMMISSIONER BALCH: I think you're right.  
15 I think it should be called (d).

16 And that (5) will be (e)?

17 CHAIRPERSON BAILEY: A little (d).

18 COMMISSIONER BALCH: And then a little  
19 (e).

20 COMMISSIONER BLOOM: Yeah.

21 CHAIRPERSON BAILEY: We'll skip that and  
22 go to Section 14.

23 We have a red underline there, "an  
24 emergency pit."

25 CHAIRPERSON BAILEY: I am okay with the

1 language in 14 B.

2 COMMISSIONER BALCH: I am as well.

3 COMMISSIONER BLOOM: I am too. We had  
4 discussion on that.

5 COMMISSIONER BALCH: The first thing we  
6 did was we moved the definitions up to the other  
7 definitions, so that can be removed.

8 There was a lot of discussion about time  
9 periods and things like that, that I think we  
10 resolved. That there were mechanisms already in  
11 place to give relief if something was not done  
12 within 60 days --

13 CHAIRPERSON BAILEY: Uh-huh.

14 COMMISSIONER BALCH: -- you can file for a  
15 hearing.

16 CHAIRPERSON BAILEY: We had a lot of  
17 discussion for all of B, and I'm fine with all of  
18 that language.

19 This is actually A, "Variances."

20 COMMISSIONER BLOOM: Yes, I think that  
21 will to work nicely.

22 COMMISSIONER BALCH: Yes.

23 CHAIRPERSON BAILEY: Okay. So all the  
24 language under "Variances" is accepted.

25 COMMISSIONER BALCH: Yes.

1 COMMISSIONER BLOOM: Would that become A 2  
2 there?

3 CHAIRPERSON BAILEY: What?

4 COMMISSIONER BLOOM: Would that become  
5 19.15.17.15 A 2?

6 And then 4: "If a variance goes to  
7 hearing pursuant to 19.15.17.15," I believe that  
8 would be A now.

9 CHAIRPERSON BAILEY: You're right.

10 COMMISSIONER BLOOM: I believe that  
11 becomes 19.15.17.15 A 3.

12 CHAIRPERSON BAILEY: Well, that becomes B.

13 COMMISSIONER BALCH: I believe much of the  
14 language in 2 was adopted from exceptions in the  
15 previous rule.

16 COMMISSIONER BLOOM: That's correct.

17 COMMISSIONER BALCH: And we had -- when we  
18 discussed variances and exceptions, we felt that  
19 exceptions should be rare and only used in  
20 extraordinary circumstances.

21 COMMISSIONER BLOOM: Yes.

22 COMMISSIONER BALCH: I agree it should be  
23 a very high bar to meet.

24 I have read through all of Section B, and  
25 with the exception of renumbering, I think it's

1 fine.

2 COMMISSIONER BLOOM: I believe just to  
3 clean up a little thing, on B, C, D, and E, you can  
4 get rid of all of those 2s on line 2 there.

5 COMMISSIONER BALCH: I think I remember  
6 talking about what is an affected tribal or pueblo  
7 government and that we could not really change that.

8 CHAIRPERSON BAILEY: So at the end of f we  
9 put the "and," and then removed "and to" at the  
10 beginning of g.

11 Put the semicolon before "governments" --  
12 I mean after "governments."

13 Yes. And then remove the underlining for  
14 all down to that point.

15 We can remove the underlining for all down  
16 to that point.

17 We can remove the underlining all the way  
18 down through that entire section, can't we?

19 COMMISSIONER BALCH: I have read through  
20 all of that, and I'm in agreement with it as it is  
21 written. The only possible thing we might change is  
22 to other portions of the rule that it may have  
23 renumbered.

24 COMMISSIONER BLOOM: It looks good to me.

25 CHAIRPERSON BAILEY: Yes. The only time

1 we need to look at that is down in paragraph 9.

2 So...

3 We need to check the references in 9 to  
4 make sure they are correct.

5 So that would become A 2. Is that right?

6 No. It would have to be B, because B  
7 deals with exceptions. So that is all right.

8 Change that to B 2.

9 COMMISSIONER BALCH: Maybe this is a place  
10 for the legal advice.

11 Are we talking about the entire section  
12 that deals with the rules regarding exceptions in 9?

13 MR. SMITH: I think so. I mean, that's  
14 what it looks like.

15 COMMISSIONER BALCH: I would delete the 2  
16 there.

17 COMMISSIONER BLOOM: That's fine.

18 COMMISSIONER BALCH: Now, the pointer in  
19 "a" goes to --

20 MR. SMITH: Can you move up, Theresa, to  
21 see... Keep going a little more.

22 COMMISSIONER BLOOM: I guess that is 4:  
23 "An operator shall demonstrate with a complete  
24 application..."

25 MR. SMITH: Yes. Okay. Thank you.

1 COMMISSIONER BLOOM: Application is  
2 mentioned in 4, right?

3 I'm talking about 9 a.

4 COMMISSIONER BALCH: For some reason that  
5 sentence just doesn't read right to me.

6 MR. SMITH: Well, I think it's because of  
7 the language in addition to the hearing process  
8 required, and then you go immediately into the  
9 application.

10 COMMISSIONER BALCH: I'm not sure you need  
11 a pointer there in a.

12 MR. SMITH: I think if you were going to  
13 do that you would say "in addition to the  
14 requirements at 19.15.4, the application shall  
15 include."

16 COMMISSIONER BALCH: Okay. I see what  
17 you're saying.

18 COMMISSIONER BLOOM: So you would put a  
19 period after NMAC.

20 MR. SMITH: No. I would say -- leave it  
21 exactly as it is, but put "in addition to the  
22 requirements of 19.15.4 the application shall  
23 include," colon.

24 CHAIRPERSON BAILEY: 4 is not correct.

25 COMMISSIONER BALCH: Where is the -- this

1 is the general hearing requirements, right?

2 MR. SMITH: Well, I think we need to look  
3 at that.

4 COMMISSIONER BALCH: I have no clue.

5 MR. SMITH: I'm a little surprised that  
6 19.15.4 doesn't require proof of notice anyway.

7 CHAIRPERSON BAILEY: 2 requires proof of  
8 notice. 5 allows for hearings.

9 COMMISSIONER BLOOM: I mean, this is kind  
10 of -- I mean, this doesn't read great because it  
11 says: "If an exception goes to hearing pursuant to  
12 19.15.17.15 B, in addition to the hearing  
13 requirements of 19.15.4, the application shall  
14 include a copy of the complete application."

15 The application includes a copy of the  
16 complete application?

17 MR. SMITH: Yeah.

18 COMMISSIONER BLOOM: So I mean, it's  
19 really a -- it really should say "the hearing  
20 application shall include a copy of the complete  
21 application."

22 COMMISSIONER BALCH: Right. Because we  
23 are having them fill out a formal document to  
24 basically apply for the exception, and that's what  
25 you want to have included.

1 COMMISSIONER BLOOM: Yeah.

2 COMMISSIONER BALCH: So after "NMAC, the"  
3 insert "a hearing."

4 And there we have our proof and our -- and  
5 our application.

6 MR. SMITH: Well, you might want to -- oh,  
7 okay. Right.

8 COMMISSIONER BALCH: I think it's okay  
9 now, as long as our pointers take us to the right  
10 spots.

11 MR. SMITH: Well, as long as an  
12 application is required by 19.15.4.

13 CHAIRPERSON BAILEY: Which is our  
14 adjudication process.

15 COMMISSIONER BLOOM: I don't think that's  
16 right either. Because --

17 MR. SMITH: It is.

18 COMMISSIONER BLOOM: Well, I don't think  
19 it reads right, though. Because then "The hearing  
20 application shall include a copy of the complete  
21 application submitted for" -- it's not an exception  
22 to 19.15.17.15 B 4, it's an exception to the pit  
23 rule, right?

24 COMMISSIONER BALCH: Well, okay. I think  
25 the -- it, grammatically, has issues.

1                   What you want it to have is the  
2 application that's submitted to the division.

3                   COMMISSIONER BLOOM: Yeah. It may be just  
4 to get a copy of the complete application submitted  
5 for the exception here, you know, semicolon.

6                   MR. SMITH: Yeah. That makes sense, I  
7 think.

8                   CHAIRPERSON BAILEY: It works for me.

9                   COMMISSIONER BLOOM: Get rid of that and  
10 change "and" to "the."

11                   MR. SMITH: And --

12                   COMMISSIONER BLOOM: And put "and" after  
13 the semicolon?

14                   MR. SMITH: No. I -- that was me  
15 interjecting a pause.

16                   COMMISSIONER BLOOM: Well, I was wanting  
17 to know if we want to put an "and" after the  
18 semicolon.

19                   MR. SMITH: Yes, I think you will need it.

20                   COMMISSIONER BLOOM: I think that's okay.  
21 It's good for me.

22                   MR. SMITH: Here's the thing. An  
23 application is filed in order to get a hearing.  
24 That doesn't necessarily mean, I don't suppose, that  
25 it will go to hearing. I don't know under what

1 conditions the hearing might not occur.

2 CHAIRPERSON BAILEY: If it's frivolous.

3 COMMISSIONER BALCH: Or if it's  
4 administratively concluded because there's no public  
5 comment or no opposition. There's an allowance for  
6 that.

7 I think it's okay, because we're talking  
8 about an exception that's gone to hearing in 9.

9 Now, we are saying: "In addition to  
10 normal hearing requirements you also need to have  
11 the report that you wrote asking for the exception,  
12 and you need to prove that you noticed all the  
13 people that were listed in that report of the  
14 hearing."

15 MR. SMITH: Well, under B, it probably  
16 should be proof of notification that the application  
17 for a hearing -- I mean notification of the hearing.  
18 At the time -- at the time the application for  
19 hearing is filed there won't be a date of a hearing.

20 COMMISSIONER BALCH: Proof of notification  
21 of the hearing application?

22 MR. SMITH: Yes. I think that's better.

23 COMMISSIONER BALCH: So after "hearing" we  
24 need to put "application."

25 And B 2 is where we have our long list of

1 parties, right?

2 MR. SMITH: Yeah. Now, notification. How  
3 do you want notification to be given?

4 COMMISSIONER BALCH: When -- in other  
5 cases I have seen a binder full of certified mail  
6 receipts.

7 CHAIRPERSON BAILEY: And that's listed  
8 under B 2, on how to give written notice.

9 MR. SMITH: It is?

10 CHAIRPERSON BAILEY: Yes.

11 MR. SMITH: Okay. Good.

12 COMMISSIONER BALCH: Florene, are you okay  
13 with 10?

14 MS. DAVIDSON: Yes.

15 COMMISSIONER BALCH: I think we have just  
16 one more short section to go.

17 CHAIRPERSON BAILEY: 16 A, I'm okay with  
18 that.

19 COMMISSIONER BLOOM: Yes.

20 COMMISSIONER BALCH: That's fine.

21 CHAIRPERSON BAILEY: 16 B is going to be  
22 difficult to comply with.

23 COMMISSIONER BALCH: Well, we put in  
24 "denied" and the proponents were asking for  
25 "approved." And I think that that was impractical.

1 CHAIRPERSON BAILEY: So let's accept B.

2 COMMISSIONER BALCH: I think C is all  
3 right as well.

4 CHAIRPERSON BAILEY: C, I think, is a  
5 reflection of what I brought up the day before  
6 yesterday concerning Water Quality Control  
7 Commission regulations that the OCD is also required  
8 to authorize. So this is keeping very clear the  
9 distinction between the Water Quality Control  
10 Commission and Oil and Gas Act.

11 COMMISSIONER BLOOM: Okay.

12 CHAIRPERSON BAILEY: So that's fine with  
13 me.

14 COMMISSIONER BALCH: And D, I think, is  
15 fine.

16 CHAIRPERSON BAILEY: Yes, D is fine.  
17 E is fine also.

18 COMMISSIONER BALCH: We just put in  
19 pursuant to 19.15.4.

20 COMMISSIONER BLOOM: That -- on D, is it  
21 for the protection of fresh water, public health,  
22 and the environment or the environment?

23 COMMISSIONER BALCH: I think it's an  
24 "and."

25 CHAIRPERSON BAILEY: Okay.

1 COMMISSIONER BLOOM: Are you okay with  
2 that one there?

3 CHAIRPERSON BAILEY: Yes. That's our  
4 adjudication.

5 COMMISSIONER BALCH: There was a bunch of  
6 deletions on the next page, "Transitional  
7 Provisions." And I think we -- we talked about all  
8 of those being appropriately removed because we are  
9 well past the date of...

10 CHAIRPERSON BAILEY: And they deal with  
11 below-grade tanks and closed-loop systems that we  
12 have dealt with elsewhere.

13 COMMISSIONER BALCH: Basically, we have  
14 changed most of what this stuff --

15 COMMISSIONER BLOOM: That's right. You  
16 couldn't apply for an unlined pit now.

17 COMMISSIONER BALCH: Right.

18 CHAIRPERSON BAILEY: That's the -- right.

19 COMMISSIONER BALCH: So transitional  
20 provisions, that entire section can be deleted.

21 CHAIRPERSON BAILEY: Yes.

22 COMMISSIONER BALCH: And that brings us to  
23 the end.

24 CHAIRPERSON BAILEY: So we await the  
25 documents that are due next Wednesday close of

1 business, and then we can continue this case until  
2 Thursday, January 17, at 9:00 here in Porter Hall,  
3 to debate the portions that we were unable to work  
4 with over the past several days and to determine  
5 what the standards are for the tables.

6 So do I hear a motion for us to close out  
7 today's session and to continue to January 17?

8 COMMISSIONER BALCH: I will make a motion  
9 to continue this deliberation until Thursday,  
10 January 17.

11 COMMISSIONER BLOOM: I will second that.

12 CHAIRPERSON BAILEY: All those in favor?

13 COMMISSIONER BALCH: Aye.

14 COMMISSIONER BLOOM: Aye.

15 CHAIRPERSON BAILEY: Aye.

16 Off the record.

17 (Proceedings concluded.)

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I, Paul Baca, RPR, CCR in and for the State of New Mexico, do hereby certify that the above and foregoing contains a true and correct record, produced to the best of my ability via machine shorthand and computer-aided transcription, of the proceedings had in this matter.

  
\_\_\_\_\_  
PAUL BACA, RPR, CCR  
Certified Court Reporter #112  
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